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A MANUAL

FOR

COURTS-MARTIAL,

COURTS OF INQUIRY, AND RETIRING BOARDS,

AND OF OTHER

PROCEDURE UNDER MILITARY LAW.

Revised in the Judge-Advocate General's Office, and published by authority of the Secretary of War,

FOR

USE IN THE ARMY OF THE UNITED STATES.

REVISED EDITION, 1908.

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ABBREVIATIONS.

A. R.—United States Army Regulations of 1908.
A. W.—Articles of War.
R. S.—Revised Statutes.

WAR DEPARTMENT,
OFFICE OF THE CHIEF OF STAFF,
Washington, December 15, 1908.

The Manual for Courts-Martial, Courts of Inquiry, and Retiring Boards, and of other Procedure under Military Law, prepared by direction of the Secretary of War for use in the Army of the United States, is approved and will be published for the information and guidance of all concerned.

By order of the Secretary of War:

J. FRANKLIN BELL,
Major-General, Chief of Staff.

A MANUAL FOR COURTS-MARTIAL, COURTS OF INQUIRY, AND RETIRING BOARDS, AND OF OTHER PROCEDURE UNDER MILITARY LAW.

INTRODUCTION.

MILITARY JURISDICTION.

Sec. I. MILITARY JURISDICTION is of four kinds:

1. **Military Law**; which is the legal system that regulates the government of the military establishment. It is a branch of the municipal law, and in the United States derives its existence from special constitutional grants of power.

2. **The Law of Hostile Occupation** (Military Government); that is, military power exercised by a belligerent by virtue of his occupation of an enemy's territory, over such territory and its inhabitants. This belongs to the Law of War and therefore to the Law of Nations. When a conquered territory is ceded to the conqueror, military government continues until civil government is established by the new sovereign.

3. **Martial Law at Home** (or, as a domestic fact); by which is meant, military power exercised in time of war, insurrection, or rebellion, in parts of the country retaining their allegiance, and over persons and things not ordinarily subjected to it.

4. **Martial Law applied to the Army**; that is, military power extending in time of war, insurrection, or rebellion over persons in the military service, as to obligations arising out of such emergency and not falling within the domain of military law, nor otherwise regulated by law.

The last two divisions are applications of the doctrine of necessity to a condition of war. They spring from the right of national self-preservation.

Sec. II. THE SOURCE OF MILITARY JURISDICTION is the Constitution; the *specific provisions* relating to it being found in the powers granted to Congress, in the authority vested in the President, and in a provision of the Fifth Amendment.

2. **Military Law** is derived from both *Written* and *Unwritten Sources.*

The *Written Sources* are the Articles of War, adopted as a part of the Revised Statutes of the United States in 1874 and since amended in some particulars; other statutory enactments relating to the military service; the Army Regulations; and general and special orders, and decisions promulgated by the War Department and by department, post, and other commanders.

The *Unwritten Source* is the "custom of war," consisting of the customs of the service both in peace and in war.

Sec. III. MILITARY TRIBUNALS are of three kinds, viz:

1. **Courts-Martial** (including summary courts), for the trial of offenders against military law.

2. **Courts of Inquiry,** for examining transactions of, or accusations or imputations against, officers or soldiers.

3. **Military Commissions,** for the trial of offenders against the laws of war and under martial law founded in necessity.

ARREST AND CONFINEMENT BEFORE TRIAL.[1]

Sec. I. ARREST OF OFFICERS.—"Officers charged with crime shall be arrested and confined in their barracks, quarters, or tents, and deprived of their swords by the commanding officer."[2]

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[1] Omission of arrest does not affect the jurisdiction of a court.

[2] A. W.

2. "Only commanding officers have power to place officers in arrest, except as provided in the twenty-fourth Article of War. An arrest may be ordered by the commanding officer, in person or through a staff officer, orally or in writing."[1]

3. "An officer arrested will repair at once to his tent or quarters, and there remain until more extended limits have been granted by the commanding officer. Close confinement will not be enforced except in cases of a serious nature."[2]

4. "An officer in arrest will not wear a sword nor visit officially his commanding or other superior officer, unless directed to do so. His applications and requests of every nature will be made in writing."[3]

5. "Officers will not be placed in arrest for light offenses. For these the censure of the commanding officer will generally answer the purpose of discipline. Whenever a commanding officer places an officer in arrest and releases him without preferring charges he will make a written report of his action to the department commander, stating the cause. The department commander, if he thinks the occasion requires, will call on the officer arrested for any explanation he may desire to make, and take such other action as he may think necessary, forwarding the papers to The Adjutant General of the Army for file with the officer's record, or for further action."[4]

6. "A medical officer, charged with the commission of an offense, need not be placed in arrest until the court-martial for his trial convenes if the service would be inconvenienced thereby, unless the charge is of a flagrant character."[5]

7. "When an officer is put in arrest for the purpose of trial, except at remote military posts or stations, the officer by whose order he is arrested shall see that a copy of the charges on which he is to be tried is served

[1] Par. 930, A. R.
[2] *Id.*, 931.
[3] *Id.*, 934.
[4] *Id.*, 932.
[5] *Id.*, 933.

upon him within eight days after his arrest, and that he is brought to trial within ten days thereafter, unless the necessities of the service prevent such trial; and then he shall be brought to trial within thirty days after the expiration of said ten days. If a copy of the charges be not served, or the arrested officer be not brought to trial, as herein required, the arrest shall cease. But officers released from arrest, under the provisions of this article, may be tried, whenever the exigencies of the service shall permit, within twelve months after such release from arrest."[1]

Sec. II. ARREST AND CONFINEMENT OF SOLDIERS.

1. Noncommissioned officers against whom charges may be preferred for trial will be placed in arrest in their barracks or quarters. They will not be confined in the guardhouse in company with privates, except in aggravated cases or where escape is feared.[2]

2. Noncommissioned officers *in arrest* will not be required to perform any duty in which they may be called upon to exercise command. Noncommissioned officers *in confinement* will not be sent out to work.

3. Soldiers against whom charges may be preferred for trial by summary court will not be confined in the guardhouse, but will be placed in arrest in quarters, before and during trial and while awaiting sentence, except when in particular cases restraint may be necessary.[3]

4. Privates against whom charges may be preferred for trial by general court-martial will be confined in the guardhouse before and during trial. While awaiting trial and sentence, or undergoing sentence, they will, if practicable, be kept apart from privates confined for minor offenses or by sentence of an inferior court.[4]

[1] 71st A. W.

[2] Par. 937, A. R. As to placing soldiers in irons, see page 69, par. 3, *post*.

[3] Par. 941, A. R. [4] *Id.*, 940.

5. Privates in confinement awaiting trial will not be sent to work with prisoners undergoing sentence if it can be avoided; but may, in the discretion of the commanding officer, be required to attend drills or be sent to work during the usual working hours under charge of a special sentinel.[1]

6. Privates *in arrest* may, in the discretion of the commanding officer, be required to attend parades, inspections, drills, school, or other military duties and to assist in policing in and around their barracks.

7. Except as provided in the 24th Article of War, or when restraint is necessary, no soldier will be confined without the order of an officer, who shall previously inquire into his offense. Arrest or confinement without trial as a punishment for an offense is forbidden. An officer authorizing the arrest or confinement of a soldier will, as soon as practicable, report the fact to his company or detachment commander.[2]

Sec. III. General Provisions Relating to the Arrest of Officers and Soldiers.

1. "No * * * officer commanding a guard shall refuse to receive or keep any prisoner committed to his charge by an officer belonging to the forces of the United States; provided the officer committing shall, at the same time, deliver an account in writing, signed by himself, of the crime charged against the prisoner."[3] "Every officer to whose charge a prisoner is committed shall, within twenty-four hours after such commitment, or as soon as he is relieved from his guard, report in writing,[4] to the commanding officer, the name of such prisoner, the crime charged against him, and the name of the officer committing him. * * * "[5]

2. "If there are any prisoners with no record of charges against them, the old officer of the day will report that

[1] Par. 940, A. R. [2] *Id.*, 937 and 938. [3] 67th A. W.

[4] This report is usually written in the "Guard Report," and presented to the commanding officer by the old officer of the day at guard mounting.

[5] 68th A. W.

fact to the commanding officer, who will give the necessary instructions."[1] No officer or soldier put in arrest or confinement will be so restrained more than eight days, or until such time as a court-martial can be assembled.[2]

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[1] Par. 942, A. R. [2] 70th A. W.

COURTS-MARTIAL.

COMPOSITION.

1. COURTS-MARTIAL are composed of commissioned officers only. All officers of the Regular Army, except those on the retired list[1] are eligible for detail for the trial of offenders belonging to the Regular Army;[2] but no officer will be detailed for the trial of an officer superior to himself in rank when it can be avoided.[3]

2. Officers of the Regular Army and of the Marine Corps, detached for service with the Army by order of the President, may be associated together for the trial of offenders belonging to either of these bodies.[4] But with this exception officers of the Regular Army are not competent to sit on courts for the trial of offenders belonging to other forces.[5]

3. Officers of volunteers and of the militia, when the latter are called into the service of the United States, are competent to act as members of courts for the trial of regular officers or soldiers. Militia officers are also competent to sit upon courts for the trial of volunteers. But the majority membership of courts-martial for the trial of the militia must be composed of militia officers.[6]

4. In the United States military service, the following-named courts-martial are authorized: 1st, the "**General Court-martial;**" 2d, the "**Summary Court;**" 3d, the "**Garrison Court-martial;**" 4th, the "**Regimental Court-martial.**"

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[1] Sec. 1259, R. S. But the Secretary of War may assign retired officers, with their consent, upon courts-martial, courts of inquiry, and boards. Act of April 23, 1904. (33 Stat. L., 264.)

[2] Contract surgeons, dental surgeons, and veterinarians are not eligible to sit, and chaplains are not in practice detailed as members of general courts-martial.

[3] 79th A. W. [4] 78th A. W. [5] 77th A. W.

[6] 32 Stat., 776, sec. 8, as amended by sec. 6, Act of May 27, 1908 (G. O. 99 A. G. O., 1908). However, in view of the provisions of the 77th A. W. officers of the Regular Army are not competent to sit on courts-martial for the trial of militia officers.

5. **The General Court-martial**, being the most important, will be first considered—the others, ordinarily called "**Inferior Courts-martial**," in the order named. But, as all courts-martial have much in common in regard to their jurisdiction, procedure, punishment, etc., the text may, as a rule, be regarded as apposite to all, unless the general court is specially mentioned. Exceptions in regard to jurisdiction, etc., will be made as each inferior court is considered.

6. **A General Court-martial** may consist of any number of members from five to thirteen, inclusive, and a judge-advocate; but of not less than thirteen members when this number can be convened without manifest injury to the service.[1] When, in the course of a trial, the court is reduced in number by reason of absence, challenge, or the relieving of members, it may proceed with business so long as *five* members remain. When from any cause a general court is reduced below the minimum, five, it can transact no other business than to direct the judge-advocate to report the fact to the convening authority and to adjourn to await further orders. In such a case, if the trial has not been entered upon, new members may be added; but if any testimony has been taken, the court should preferably be dissolved and a new one ordered.[2]

CONSTITUTION.

1. The President is empowered to institute general courts-martial—1st, as Commander-in-Chief of the Army, under the Constitution; 2d, in the special contingency mentioned in the next paragraph; 3d, in the particular cases provided for by section 1230, Revised Statutes.

2. Any general officer commanding an army, a territorial division, or a department, or colonel commanding a separate department, may appoint a general court-martial whenever necessary.[3] But when any such com-

[1] 75th A. W. "A decision of the appointing authority as to the number that can be assembled without injury to the service is conclusive." (Par. 952, A. R.)

[2] *For form of order for general court, see par*

[3] *See par. 4, this article.*

mander is the accuser or prosecutor of any *officer* under his command the court must be appointed by the *President*.[1] In time of war this power is extended to the commander of a tactical division or of a separate brigade; but in this case when such commander is the accuser of any *person* under his command the court must be appointed by the *next higher commander*.[2]

3. The Superintendent of the United States Military Academy has power to convene general courts-martial for the trial of cadets, subject to the same limitations and conditions now existing as to other courts-martial.[3]

4. The officer who appoints a court-martial—general, garrison, or regimental—may dissolve it, and control its existence, but not the subject-matter of its deliberations. In the absence of special orders or legislation to that effect, personal presence within the territorial limits of his department is not essential to the validity of commands given by a department commander to be executed within such limits, such, for instance, as the appointment of a court-martial.[4]

JURISDICTION.

Sec. I. Courts-martial derive their existence solely from acts of Congress, and their jurisdiction is limited to the purpose of the maintenance of military discipline. Their decisions, within their jurisdiction, are not reviewable by any courts whatever.[5] The 30th Article of War relates to an exceptional procedure, not necessary to consider in this connection.

2. Courts-martial have exclusive jurisdiction to try acts constituting military offenses only, and also jurisdiction to try acts which, besides constituting military offenses, are civil crimes. In the latter case the military

[1] 72d A. W. As to when a commander is "the accuser or prosecutor," see Digest Opin. J. A. G., §§ 186, 187, 188.

[2] 73d A. W.

[3] Sec. 1326, R. S.

[4] See par. 193, A. R. The authority to convene a court-martial or to relieve or detail members, etc., can not be delegated to a staff officer during the absence from his department of the commander (Digest Opin. J. A. G., § 185).

[5] *See Digest Opin.* J. A. G., § 992, and note.

ordinarily gives precedence to the civil court; in general, however, that jurisdiction which has *first fully attached* is properly allowed to have the precedence, and when an officer or a soldier has been arraigned before a duly constituted court-martial for an offense triable by it, the jurisdiction thus attached can not be set aside by the process of a State court.[1]

3. *As regards persons*, courts-martial have jurisdiction, at all times and in all places, over officers and soldiers of any troops, whether militia or others, mustered and in pay of the United States,[2] over officers and soldiers of the marines, when detached for service with the Army,[3] over persons who fraudulently enlist in the service of the United States and receive pay or allowance thereunder,[4] and over offenders, in general, to whom, owing to the commission of a crime, military jurisdiction has legally attached—as by an arrest or confinement—before expiration of term of service, provided such jurisdiction is not terminated by their discharge. This jurisdiction over persons in the military service covers all military offenses committed by them, whether within or beyond the territorial jurisdiction of the United States. Military offenses are not territorial.

4. As a rule, military jurisdiction ends when a soldier is discharged. The present exceptions to this rule are, discharged officers and soldiers guilty of fraud against the United States under the 60th Article of War; discharged officers granted trial after summary dismissal, under section 1230, Revised Statutes; and military convicts.[5]

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[1] See Digest Opin. J. A. G., § 1036, and notes. Par. 963, A. R., provides that "in order that military jurisdiction may promptly vest, charges will be preferred immediately in every case that is subject to military jurisdiction but in which the offense is of such a nature that it is possible for the civil courts also to claim jurisdiction."

[2] 64th A. W. This includes retired officers and soldiers.

[3] Sec. 1621, R. S.

[4] Act of July 27, 1892; see G. O. 57, A. G. O. 1892. *A fraudulent enlistment* is an enlistment procured by means of a willful misrepresentation in regard to a qualification or disqualification for enlistment, or by intentional concealment of a disqualification, which has had the effect of causing the enlistment of a man not qualified to be a soldier, and who but for such false representation or concealment would have been rejected.

[5] *Act approved June 18, 1898*, page 128, *post*

5. *In time of war* this jurisdiction extends to "all retainers to the camp and all persons serving with the armies of the United States in the field, though not enlisted soldiers;"[1] to any person who "relieves the enemy with money, victuals, or ammunition, or knowingly harbors or protects an enemy;"[2] or who "holds correspondence with, or gives intelligence to, the enemy, either directly or indirectly;"[3] and to spies.[4]

6. *As regards offenses*, the jurisdiction embraces, the offenses specifically defined in the Articles of War, or included under the general terms of the 61st and 62d articles; the offense of military persons trading with the enemy,[5] and that of fraudulently enlisting in the service of the United States.[6]

7. A court having once duly assumed jurisdiction of an offense and person, can not, by any wrongful act of the accused, be ousted of its authority or discharged from its duty to proceed fully to try and determine, according to law and its oath. Thus the fact that, pending the trial, the accused has escaped from military custody, furnishes no ground for not proceeding to a finding, and, in the event of conviction, to a sentence, in the case; and the court may and should find and sentence as in any other case.

Sec. II. **General Courts-Martial** have, *as regards persons and with reference to other courts-martial, exclusive jurisdiction* over officers,[7] cadets,[8] and "candidates for promotion."[9] Over enlisted men, other than candidates for promotion, and military convicts, they have concurrent jurisdiction with the inferior courts[10] in cases cognizable by the latter.[11]

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[1] 63d A. W. [2] 45th A. W. [3] 46th A. W.

[4] Sec. 1343, R. S. [5] Secs. 5306 and 5313, R. S.

[6] Act of July 27, 1892; see G. O. 57, A. G. O., 1892. For definition of fraudulent enlistment, see page 14, note 4, *ante*.

[7] 83d A. W. [8] Sec. 1326, R. S.

[9] Act of July 30, 1892; G. O. 79, A. G. O., 1903.

[10] They have concurrent jurisdiction with garrison and regimental courts-martial in time of war over the persons mentioned in the 63d A. W.

[11] Par. 967, A. R., prescribes that noncommissioned officers will not, if they object thereto, be brought to trial before regimental, garrison, or summary court-martial without the authority of the officer competent to order their trial by *general court-martial*. See also act approved June 18, 1898, page 428, po

2. *As regards offenses*,[1] they have *exclusive jurisdiction* over all offenses punishable capitally,[2] and over those set forth in the 58th Article, when committed in time of war. Over other offenses they have *concurrent jurisdiction* with the inferior courts; but all offenses for which the limit of punishment is in excess of the limits of the punishing power of an inferior court, as well as all serious noncapital offenses for which limits of punishment have not been prescribed, will, when practicable, be tried by general court-martial.

CHARGES AND SPECIFICATIONS.

Sec. I. A military charge corresponds to a *civil indictment*. It consists of two parts—the technical "*charge*," which designates the alleged offense in general terms, and the "*specification*," which sets forth the facts constituting the same. The requisite of a *charge* is, that it shall be laid under the proper Article of War or other statute; of a *specification*, that it shall set forth facts sufficient to constitute the particular offense. Under the general term "charges," any number of technical charges and their specifications may be included.

2. When an Article of War relates to but one kind of offense, the charge may be laid as a violation of such article. If the offense has a technical name or description known to the service, such as "Desertion," "Absence-without-leave," "Sleeping on post," etc., it may be charged simply as such, or, preferably, also laid under the appropriate Article of War. A charge laid under the 61st Article of War will properly describe the offense as "conduct unbecoming an officer and a gentleman." A charge laid under the 62d Article of War may give the name or description of the offense, alleging it to be "in violation of the 62d Article of War," or may describe it as "conduct to the prejudice of good order and military discipline."

[1] Military offenses, wheresoever committed, are punishable under the Articles of War; see page 14, par. 3, *ante*.

[2] 83d A. W.

3. When an offense is specifically provided for in an Article of War the charge will be laid under that article and not under the 62d Article. Especially is it wrong to lay a charge under the 62d Article when the offense falls under an article which prescribes a fixed punishment.

4. In case of an absence from any appointed parade, drill, or other exercise, but not from the limits of the post, the charge should be laid under the 33d Article of War; in case of absence from the post, or command, under the 32d; and sometimes, in order that the court may be able to judge of the full nature of the offense, under both, as when some duty, other than an ordinary roll call, is neglected; *e. g.*, when a soldier, regularly detailed for guard, absents himself not only from guard mounting but also from his post.

5. Soldiers found drunk on any guard, party, or other duty after having actually entered upon such duty, but not until then discovered to be drunk, should be charged with violation of the 38th Article of War.

6. In preferring charges against an enlisted man who has coupled with desertion a later fraudulent enlistment, there will be added to the usual specification setting forth the desertion, an additional one setting forth the offense of desertion by reenlisting without a regular discharge from his former regiment, troop, battery, or company. The specifications to the charges of desertion and fraudulent enlistment will set forth the offenses under the original name and organization, and include the other name, etc., under an *alias*.[1]

7. Accused persons will not be joined in the same charge, nor tried on joint charges, unless for concert of action in an offense. To warrant the joining of several persons in the same charge, the offense must be such as requires for its commission a combination and must have been committed in concert, in pursuance of a common intent.

8. As to whether an act which is a civil crime is also a military offense no rule can be laid down which will cover all cases, for the reason that what may be a military offense under certain circumstances may lose

[1] *Cir. 76, W. D., 1908.* See forms for charges, page 136 and 140, p

that character under others. For instance, larceny by a soldier from a civilian is not always a military crime, but it may become such in consequence of the particular features, surroundings, or locality of the act. What these may be can not be anticipated with a sweeping rule, comprehensive enough to provide for every possible conjunction of circumstances. Each case must be considered on its own facts. But if the act be committed on a military reservation, or other ground occupied by the army, or in its neighborhood, so as to be in the constructive presence of the army; or if committed while on duty, particularly if the injury be to a member of the community whom it is the offender's duty to protect; or if committed in the presence of other soldiers, or while in uniform; or if the offender use his military position, or that of another, for the purpose of intimidation or other unlawful influence or object—such facts would be sufficient to make it prejudicial to military discipline within the meaning of the 62d Article of War.

Sec. II. **The specification** need not possess the technical nicety of an indictment at common law. A bald statement of facts is sufficient, provided the legal offense itself be distinctly and accurately described.[1]

2. In order that the accused may be left in no doubt as to the precise offense with which he is charged, the *time* and *place* of the commission of the offense should be stated as accurately as possible. When any doubt exists as to the exact date and locality, it may be stated that the act specified was committed "on or about" a certain time, or "at or near" a given place. In preparing several specifications under one charge, the time and place of the alleged offense should be given in each.

Sec. III. Many of the Articles of War include two or more offenses. When a charge is to be laid under such an article, the particular offense committed should be stated. A specification in an alternative form is bad

[1] *Digest Opin.* J. A G., § 695, and

pleading. For example, it is wrong to allege "selling *or* through neglect losing," in violation of the 17th Article of War.

2. The prosecution is at liberty to charge an act under two or more forms, when it is doubtful under which it will more properly be brought by the testimony. In the military practice, the accused is not entitled to call upon the prosecution to *elect* under which charge it will proceed in such, or indeed in any, case.

Sec. IV. "Before forwarding charges they will be carefully investigated by the commanding officer, or an officer designated by him, other than the officer preferring the charges, and in forwarding the charges the name of the officer making the investigation will be noted in the commanding officer's indorsement. The commanding officer will state in his indorsement whether or not, in his opinion, the charges can be sustained."[1] Before referring to summary courts charges for which the maximum limit of punishment that may be awarded is greater than one month's forfeiture and confinement, commanding officers will cause the accused to sign a statement on the charge sheet as to whether or not he consents to trial by summary court. A note of this statement in each case will also be entered on the monthly report of trials by such court.

2. Charges against an enlisted man forwarded to the authority ordering a general court-martial, or submitted to a summary, garrison, or regimental court, must be accompanied by the proper evidence of previous convictions.[2] "General courts-martial will consider only such evidence of previous convictions as is referred to them by the convening authority."[3]

3. Charges against an enlisted man forwarded to the authority competent to order a general court-martial for his trial will also be accompanied by a statement of

[1] Par. 963, A. R. [2] *Id.*, 962 and 964; see page 48, par. 2, post. [3] Id., 971.

service[1] in accordance with the form given on page 143, *post*. In case of a deserter the surgeon's report required by paragraph 125, Army Regulations, will also be forwarded with the charges.[2]

Sec. V. After charges have been formally referred by competent authority to a court-martial for trial, the court is not authorized in its discretion and upon its own motion, to strike out a charge or specification, or to direct or permit the judge-advocate to drop, or withdraw, such charge or specification, or to enter a *nolle prosequi* as to the same. For such action the authority of the convening officer is requisite. Where, however, by a special plea or objection, an *issue* is made by the accused as to the sufficiency of any charge and specification, the court, without referring the question to the convening officer, is empowered to sustain the plea or objection, and quash or strike out the charge.

2. Charges should be signed by a commissioned officer, but a contract surgeon or dental surgeon may sign charges against an enlisted man.[3]

ADDITIONAL CHARGES.

1. After the accused has been arraigned upon certain charges, has pleaded thereto, and the trial on the same has been entered upon, new and additional charges, which the accused has had no notice to defend, can not be introduced or the accused required to plead thereto. Such charges should be made the subject of a separate trial, upon which the accused may be enabled properly to exercise the right of challenge to the members of the court and effectively to plead and defend.

ORGANIZATION.

1. The authority appointing a court-martial designates the place for holding the court, the hour of meeting, the members of the court, and a judge-advocate.[4]

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[1] See page 64, par. 7, *post*, and par. 962, A. R.

[2] *For form, see page 143, post.*

[3] *Par. 1413, A. R.*

[4] Pars. 952 [illegible]

2. Courts will be assembled at posts or stations where trial or examination will be attended with the least expense. They will, as far as practicable, hold their sessions so as to interfere least with ordinary routine duties.

3. A *general court-martial* assembles, at its first session in accordance with the order convening it; thereafter, according to adjournment. The members wear dress uniform, or service uniform in commands not provided with dress uniform, with their sabers; the judge-advocate and the accused appear in the same uniform as the court without side arms. Military witnesses wear the same uniform as the court with side arms. The accused should not be brought before the court in irons, unless there are good reasons to believe that he will attempt to escape or to conduct himself in a violent manner; but the fact that a prisoner has been tried in irons can not, in any case, affect the validity of the proceedings.

4. When the court is ready to proceed, the members take seats at a table provided for their use; the president sits at the head of the table and the other members at his right and left alternately, according to rank. The judge-advocate sits at the foot of the table or at a separate table; the accused and his counsel at a table provided for them and placed in a convenient position. A witness, when testifying, is seated near the judge-advocate, and the reporter at a table placed near the witness' chair.

5. The *order of procedure* is given in detail in the "form for record of a general court-martial," page 144, *post*. During the reading of the order convening the court and the arraignment, the judge-advocate and the accused should stand; while the court and the judge-advocate are being sworn, all stand; when a reporter, an interpreter, or a witness is being sworn, he and the judge-advocate should stand; and when the judge-advocate, the accused, or his counsel addresses the court *should rise.*

6. The organization of the court is complete on the swearing in of the members and the judge-advocate.

THE MEMBERS.

1. **Members** of a court-martial will be named in the order appointing it, in accordance with their rank. They will sit according to rank as announced, and will "behave with decency and calmness."[1] A court-martial has no power to punish its members, but a member is liable for improper conduct as for any other offense against military discipline. Improper words used by a member should be taken down in writing, and any disorderly conduct reported to the appointing authority.[2]

Reading of newspapers or other evidence of inattention by members of a court-martial during its sessions constitutes a violation of duty to the prejudice of good order and military discipline. It is the duty of the president of the court to admonish against such inattention, and charges may be preferred against a member who does not heed the admonition.

2. "Members of a court-martial, in giving their votes, shall begin with the youngest in commission."[3] In all deliberations the law secures the equality of the members.

3. When a member is prevented from attending a session of the court he will communicate the cause to the judge-advocate, so that the same may be entered in the record of proceedings. If he fails to do so it is the duty of the president at the next meeting of the court to call upon him for such explanation as he may desire to make.

4. A member stationed at the place where a court-martial sits is liable to duty with his command during adjournment of the court from day to day.[4]

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[1] Par. 952, A. R., and the 87th A. W.

[2] Par. 955, A. R.

[3] 95th A. W. A tie vote on *the findings* is a vote of "not guilty;" a tie vote on a proposed sentence or on any objection or motion is a vote in the *negative. The sentence is not* adopted, and the objection or motion is not *sustained.*

[4] Par. 953, A

THE PRESIDENT.

1. "A president of the court will not be announced. The officer highest in rank present will act as president."[1] Besides his duties and privileges as a member, the president is the organ of the court to maintain order and conduct its business. He speaks and acts for the court in every instance where a rule of action has been prescribed by law, regulations, or its own resolution. He administers the oath to the judge-advocate and authenticates by his signature all acts, orders, and proceedings of the court requiring it.

THE JUDGE-ADVOCATE.

1. "The judge-advocate * * shall prosecute in the name of the United States, but when the prisoner has made his plea he shall so far consider himself counsel for the prisoner as to object to any leading question to any of the witnesses, and to any question to the prisoner, the answer to which might tend to criminate himself."[2]

2. *Before the court assembles* the judge-advocate should note and report to the convening authority any irregularity in the order convening the court and see that the charges are technically and correctly drawn. He may ordinarily correct obvious mistakes of form, or slight errors in name, dates, amounts, etc., but he should not, without the authority of the convening officer, make *substantial* amendments in the allegations, or—least of all—reject or withdraw a charge or specification, or enter a *nolle prosequi* as to the same, or substitute a new and distinct charge for one transmitted to him for trial.

3. The judge-advocate should acquaint the prisoner with the accusations against him, inform him of his right to have counsel,[3] and to testify in his own behalf, and furnish him with a copy of the charges, if desired. He may ask a prisoner how he intends to plead; but, when the accused is an enlisted man, he should in no case try

[1] *Par. 954, A. R.* [2] 90th A. W. [3] See page 25, post.

to induce him to plead guilty or leave him to infer that if he does so his punishment will be lighter. When the accused determines to plead guilty the judge-advocate should advise him of his right to introduce evidence in explanation of his offense, and should assist him in securing it; and if the charge be desertion, the judge-advocate should satisfy himself that the accused understands that such plea will be an admission of his unauthorized absence with the intention of not returning.

4. The judge-advocate should also, before the court assembles, obtain a suitable room for the court, see that it is in order, procure the requisite stationery, summon necessary witnesses,[1] make a preliminary examination of the latter, and as far as possible systematize his plans for conducting the case.

5. *During the trial* the judge-advocate conducts the case for the Government. He executes all orders of the court; reads the convening order to the accused; swears the members of the court, the reporter, interpreter, and all witnesses; arraigns the accused; examines witnesses; keeps, or superintends the keeping of, a complete and accurate record of the proceedings,[2] and affixes his signature to each day's proceedings.[3] In conjunction with the president of the court he authenticates the record by his signature,[3] and at the end of the trial transmits the same to the convening authority.[4] Whenever, by reason of the death or disability of the judge-advocate occurring after the court has decided on the sentence, the record can not be authenticated by his signature, it must show that it has been formally approved by the court and must be authenticated by the signature of the president.[5]

6. While the court is in open session the judge-advocate should respectfully call the attention of the court

[1] See page 34, *post*.

[2] For form for record, see page 144, *post*.

[3] Par. 988, A. R.

[4] *Id.*, 990. The proceedings of all courts appointed by the President will be sent direct to the Secretary of War. (Par. 925, A. R.)

[5] *Id., 988.*

to any illegalities in its action, and to any irregularities in its proceedings. He should act as legal adviser of the court so far as to give his opinion upon any point of law arising during the trial, when it is asked for by the court, but not otherwise.

7. *When a court sits in closed session* the judge-advocate will withdraw, and when his legal advice or assistance is required, it will be obtained in open court.[1]

8. Throughout the trial the judge-advocate should do his utmost to present the whole truth of the matter in question. He should oppose every attempt to suppress facts or to torture them into false shapes, to the end that the evidence may so exhibit the case that the court may render impartial justice.

9. The judge-advocate should regard his duty toward the accused as not strictly limited by the 90th Article of War, and when the latter is ignorant and without counsel the judge-advocate should take care that he does not suffer upon the trial from any ignorance or misconception of his legal rights, and has full opportunity to interpose such pleas and make such defense as may best bring out the facts, the merits, or the extenuating circumstances of his case.

10. Whenever the court adjourns to meet at the call of the president, the judge-advocate will notify the members of the time designated by the president for reassembling.

COUNSEL.

1. The accused is not of right entitled to counsel, but the privilege is almost invariably conceded, and if refused, such refusal may be ground for the disapproval of the proceedings.[2]

2. The commanding officer of a post where a general court-martial is convened will, at the request of any prisoner who is to be arraigned, detail a suitable officer as counsel for the defense. If there be no such officer

[1] *Par. 956, A. R.* [2] Digest Opins. J. A. G., § 984.

available for detail the fact will be reported to the authority appointing the court for his action.[1]

3. An officer detailed as counsel for a soldier before a general court-martial should guard the interests of the accused by all honorable and legitimate means known to the law, so far as they are not inconsistent with military relations.[2] He should not obstruct the proceedings with frivolous or manifestly useless objections.

4. If the judge-advocate keeps the record in *longhand* the counsel will be required to reduce his questions and arguments to writing; but if the court has a stenographic reporter the counsel will be allowed to question witnesses and address the court orally.

REPORTER.

1. "The commanding officer will detail, when necessary, a suitable enlisted man as clerk to assist the judge-advocate of a general court-martial, or military commission, or the recorder of a court of inquiry.[3]

2. "A judge-advocate of a general court-martial or military commission, and a recorder of a court of inquiry, when appointed by a general officer or a colonel exercising the command of a general officer, may employ when authorized by the convening authority, a stenographic reporter, who shall be paid at the following rates of compensation by the Pay Department on vouchers certified to be correct by the judge-advocate or recorder, who will forward a copy of the same with the record:

"For each case not to exceed one dollar ($1.00) an hour for time actually spent in court during the trial or hearing, except when the court or commission sits less than three hours during the first day,[4] when the allow-

[1] Par. 970, A. R. This privilege of being represented by counsel does not apply to cases before inferior courts.

[2] *Id.*

[3] *Id.*, 995.

[4] See Cir. 81, W. D., 1908.

ance for such day shall be three dollars ($3.00). Time will be reckoned to the nearest half of an hour.

"Fifteen (15) cents for each 100 words for transcribing notes and making that portion of the original record[1] which is typewritten; but no allowance shall be made for the first carbon copy of that portion of the record which is typewritten or for original papers which are appended as exhibits.[2]

"Ten (10) cents for each 100 words for copying papers material to the inquiry, and two (2) cents for each 100 words for each carbon copy of the same, when ordered by the court or commission for its use.

"Two (2) cents for each 100 words for the second and each additional carbon copy of the record when authorized by the convening authority.

"Except for such part of the journey as may be covered by Government transportation, mileage at the rate authorized for a civilian witness not in Government employ, and three ($3.00) dollars a day for expenses when the judge-advocate or recorder keeps him at his own expense, away from his usual place of employment for twenty-four hours or more, on public business referred to the court or commission, shall be allowed the reporter for himself, and when ordered by the court or commission, for each necessary assistant.

"The judge-advocate or recorder shall require the reporter to furnish the typewritten record of the proceedings of each session of the court or commission with one carbon copy of the same not later than twenty-four hours after the adjournment of that session. The complete record to be finished, indexed, bound, and ready for authentication not later than forty-eight hours after the completion of its action by the court or commission on the merits of the case or hearing."[3]

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[1] Original record includes exhibits.

[2] The carbon copy is for use of the judge advocate and the court during the trial, and, if accused desires, it should, after being corrected, completed and certified as a true copy, except as to findings, sentence, and exhibits not copied, be furnished to him. When this is done a certificate to that effect will accompany the record. If not furnished to the accused it will be transmitted direct to the Judge-Advocate-General of the Army.

[3] *Par. 996, A. R.* For form for index, see page 144, post.

3. Reporters are selected and employed by the judge-advocate of the court, and will be paid by the Pay Department on the certificate of the judge-advocate.[1]

4. "No person in the military or civil service of the Government can lawfully receive extra compensation for clerical duties performed for a military court."[2]

INTERPRETER.

1. "Interpreters to courts-martial are paid by the Pay Department upon the certificate of the judge-advocate that they were employed by order of the court. They will be allowed the pay and allowances of civilian witnesses."[3]

CHALLENGE.

1. "Members of a court-martial may be challenged by a prisoner, but only for cause stated to the court. The court shall determine the relevancy and validity thereof, and shall not receive a challenge to more than one member at a time."[4] Under the custom of the service the judge-advocate may also challenge for cause.

2. A positive declaration by the challenged member that he is not prejudiced against the accused, nor interested in the case, is ordinarily satisfactory to the accused, and, in the absence of material evidence in support of the objection, will justify the court in overruling it. If, however, the statement is unsatisfactory, or the member makes no response, the accused may offer testimony in support of his objection or may subject the challenged

[1] Par. 996, A. R. For form of voucher for payment of reporter, see page 184, *post*.

[2] *Id.*, 997.

[3] *Id.*, 998. As to pay, etc., of civilian witness, see page 43, *post*. Interpreters are paid on the blank forms used for civilian witnesses not in Government employ.

[4] 88th A. W. This Article of War authorizes the exercise of the right of challenge before all courts except summary courts.

member to an examination by interrogatories in the same manner that a juror is examined in criminal courts. If the accused desires that the challenged member be put on his *voir dire*, the judge-advocate will administer the oath before the court is sworn.

3. Courts should be *liberal* in passing upon challenges, but they will not entertain an objection that is not *specific*, nor one upon the mere assertion of the accused, if it is not admitted by the challenged member. A challenge upon the ground, admitted or proven, that a member preferred the charges or is a material witness in support thereof, or that he has investigated the charges and expressed the opinion that they can be established, should be sustained by the court.

4. The court of itself can not excuse a member in the absence of a challenge. A member, not challenged, who thinks himself disqualified, can be relieved only by application to the convening authority. No member who has been absent during the taking of evidence shall thereafter take part in the trial; but this provision shall not be construed as invalidating the proceedings of courts-martial if no objection is made, and the court permits the member to sit, but is to be regarded as a requirement which should always be complied with when practicable. Especially should a member who has been absent during an important part of the proceedings not be permitted to resume his seat.

5. The judge-advocate is not challengeable; but in case of personal interest in the trial he should apply to the convening authority to be relieved.

OATHS.[1]

Of Members.—The judge-advocate shall administer to each member before the court proceeds upon any

[1] Whenever the same court-martial tries more than one prisoner on separate and distinct charges, the oaths herein prescribed will be administered anew.

trial, the following oath, which shall also be taken by all members of regimental and garrison courts-martial:

"You, A B, do swear that you will well and truly try and determine, according to evidence, the matter now before you, between the United States of America and the prisoner to be tried, and that you will duly administer justice, without partiality, favor, or affection, according to the provisions of the rules and articles for the government of the armies of the United States, and if any doubt should arise, not explained by said articles, then according to your conscience, the best of your understanding, and the custom of war in like cases; and you do further swear that you will not divulge the sentence of the court until it shall be published by the proper authority, except to the judge-advocate; neither will you disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof, as a witness, by a court of justice, in a due course of law. So help you God."[1]

2. **Of the Judge-Advocate.**—When the oath has been administered to the members of a court-martial, the president of the court shall administer to the judge-advocate, or person officiating as such, an oath in the following form:[2]

"You, A B, do swear that you will not disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof, as a witness, by a court of justice, in due course of law; nor divulge the sentence of the court to any but the proper authority, until it shall be duly disclosed by the same. So help you God."[3]

3. **Of Witness.**—All persons who give evidence before a court-martial shall be examined on oath, or affirmation, in the following form:

"You swear (or affirm) that the evidence you shall give, in the case now in hearing, shall be the truth, the

[1] 84th A. W.

[2] During the administration of the oaths to the court and the judge-advocate, all members of the court, the judge-advocate, and the

[3] *86th A. W.*

whole truth, and nothing but the truth. So help you God." [1]

4. **Of Reporter.**—"You swear that you will faithfully perform the duties of reporter to this court. So help you God."

5. **Of Interpreter.**—"You swear that you will truly interpret in the case now in hearing. So help you God."

6. **Voir Dire.**—"You swear that you will true answers make to questions touching your competency as a member of the court (or witness) in this case. So help you God."

7. Judge-advocates of departments and of courts-martial, and the trial officers of summary courts, are authorized to administer oaths for the purposes of military justice, and for other purposes of military administration.[2]

8. "Any officer or clerk of any of the departments lawfully detailed to investigate frauds on, or attempts to defraud, the Government, or any irregularity or misconduct of any officer or agent of the United States, and any officer of the Army detailed to conduct an investigation, and the recorder, and if there be none the presiding officer of any military board appointed for such purpose, shall have authority to administer an oath to any witness attending to testify or depose in the course of such investigation." [3]

POSTPONEMENT.

1. If, before the accused is arraigned, a postponement is *necessary*, application therefor should properly be made to the convening authority. The court may, during trial, "for reasonable cause, grant a continuance to either party, for such time, and as often as may appear to be just: *Provided*, That if the prisoner be in close

[1] 92d A. W.

[2] Act of July 27, 1892; see G. O. 57, A. G. O., 1892.

[3] Sec. 183, R. S., as amended by act of March 2, 1901, p. 130, post.

confinement, the trial shall not be delayed for a period longer than sixty days."[1]

2. Upon application by the accused for a postponement or a continuance because of the absence of a witness, it should distinctly appear, on his oath, that the witness is material, and why, and that the accused has used due diligence to procure his attendance, and has reasonable ground to believe, and does believe, that he will be able to procure such attendance within a reasonable time stated.

3. Application for *extended* delay will, when practicable, be made to the authority appointing the court. When made to the court, if in the opinion of the court it is well founded, it will be referred to the convening authority to decide whether the court shall be adjourned or dissolved.

ARRAIGNMENT.

1. The court being organized, and both parties ready to proceed, the judge-advocate will read the charges and specifications, separately and in order, to the accused, and ask him how he pleads to each—"guilty," or "not guilty." The order pursued, in case of several charges or specifications, will be to arraign on the first, second, etc., specifications to the first charge, then on the first charge, and so on with the rest.[2]

PLEAS.

1. Ordinarily the plea of the accused is "guilty" or "not guilty" to each charge and specification; or, guilty of a specification excepting certain words, and of the excepted words not guilty; or, as when charged with an offense which includes a lesser one of kindred degree, guilty to the specification except certain words, substituting therefor certain others, and to the charge not guilty, but guilty of the lesser kindred offense.[3]

[1] 93d A. W.

[2] During the arraignment the judge-advocate [illegible] accused stand.

[3] See page 46, par. 3, *post*.

2. A plea of guilty does not necessarily exclude evidence. In cases of discretionary punishment[1] a full knowledge of the circumstances attending the offense is essential to the court in measuring the punishment, and to the convening authority in acting on the sentence. It is, therefore, proper for the court to take evidence after a plea of guilty, except when the specification is so descriptive as to disclose all the circumstances of mitigation or aggravation.

3. In all cases after a plea of guilty, the accused will be permitted to offer evidence in mitigation of the offense charged: and if the offense be desertion, it should appear of record that he understood his plea to admit the intention to abandon his enlistment and not merely an unauthorized absence.[2]

4. When testimony is heard after a plea of "guilty," the witnesses may be cross-examined, evidence may be produced to rebut their testimony, evidence as to character may be offered, and the court may be addressed in extenuation of the offense or in mitigation of punishment.

5. When the accused pleads "guilty" and, without any evidence being introduced, makes a statement inconsistent with his plea, the statement and plea will be considered together, and if guilt is not conclusively admitted, the court will direct the entry of a plea of "not guilty," and proceed to try the case on the general issue thus made.

6. If the prisoner, from obstinacy or deliberate design, stands mute, or answers foreign to the purpose, the court will proceed to trial and judgment as if the prisoner had pleaded "not guilty."[3]

7. Instead of pleading to the general issue, the accused may interpose a special plea either to the jurisdiction, in abatement, or in bar of trial,[4] or he may make either of these special pleas to any specification, presenting reasons why he should not be tried on it. The

[1] See page 47, *post*.

[2] G. O. No. 91, A. G. O., 1881, and Cir. 66, W. D., 1908.

[3] 89th A. W.

[4] As to plea of *autrefois acquit* in a case involving both a civil and a military offense, see *Digest* Opin. J. A. G., §§ 306, 1036, and notes.

burden of substantiating such pleas rests on the accused. Both sides should be heard, and the proceedings under the plea recorded. If the plea in bar of trial be found valid, the court will report its decision to the convening authority and await further instructions; if, by the special plea, an *issue* is made, the court is empowered to sustain or overrule the plea;[1] when a special plea is made and overruled, the accused will be required to plead to the general issue.

8. A second enlistment in the service of the United States, when the first has not been fulfilled, is not void, but voidable at the option of the United States only; so that a man who, whilst serving under such a second enlistment, commits an offense, can not successfully plead the fraudulent character of his second enlistment in bar of trial. Paragraph 132, Army Regulations, relates to soldiers *not charged with crime* who are discovered to be deserters from the Navy or Marine Corps, and does not interpose any obstacle to trial by court-martial for offenses committed while in the military service.

9. The *statute of limitation* (103d Article of War) is not prohibitory as to jurisdiction,[2] but is properly a matter of *defense*, which, to be effective, must be pleaded and proved, or, in some express manner, taken advantage of on the *evidence*.

ATTENDANCE OF WITNESSES.

Sec. I. "The judge-advocate will summon the necessary witnesses for the trial, but will not summon witnesses at the expense of the Government without the order of the court unless satisfied that their testimony is material and necessary."[3]

2. The accused is, in general, entitled to have all the material witnesses for his defense summoned; except when their testimony would be merely cumulative, and evidently add nothing to the strength of his case. As

[1] *See page* 20, Sec. v, *ante;* also, page 153, note 2, *post.*
[2] *See Digest Opin. J. A. G.*, § 320, and note. R.

far as possible, he should be allowed a full and free defense, as the least denial to him of any proper facility, opportunity, or latitude for it may serve to defeat the ends of justice.

Sec. II. *To procure the attendance of witnesses stationed or residing within the State, Territory, or District in which the court is ordered to sit, and to compel them to testify, etc., the judge-advocate will proceed as follows:*

1. Judge-advocates of courts-martial will, whenever it is possible, send subpœnas through military channels.[1] In case a civilian witness duly subpœnaed before a general court-martial refuses to appear or qualify as a witness, or to testify or produce documentary evidence, as required by law, he will at once be tendered or paid by the nearest paymaster one day's fees and mileage for the journeys to and from the court, and will thereupon be again called upon to comply with the requirements of the law. The fees and mileage of civilian witnesses residing beyond the limits of the State, Territory, or District in which the court-martial is held will not be paid in advance, as such witnesses can not be punished if they refuse to obey the summons.[2]

2. If the desired witness is a *civilian*, living near the post where the court is convened, duplicate subpœnas[3] will be prepared, one of which will be served upon the witness by the judge-advocate or by any person instructed by him; if the residence of the witness wanted is not near the post, but still within the State, etc., the judge-advocate will send the duplicate subpœnas direct to the convening authority, requesting service of the same

3. Service on a civilian witness is made, under court-martial practice, by a personal delivery of the subpœna to the witness; and *proof* of service by returning the

[1] Par. 958, A. R.

[2] See act of Congress approved March 2, 1901, page 129, *post*, and par. 1001, A. R. See, also, page 38, *post*, note 1.

[3] *For forms, see pages* 170 and 171, *post*.

duplicate original to the judge-advocate, indorsed as explained in the form published on page 171, *post*. Any person may serve the subpœna,[1] but the service *must be personal*.

4. Should a civilian witness fail to appear[2] after due and reasonable notice, after having been served with a subpœna, the judge-advocate has power to issue the like process to compel him to appear and testify which courts of criminal jurisdiction within the State, Territory, or District where such court is convened may lawfully issue.[3] This power also includes the power to execute such process through an officer, who shall be specially charged with its execution.[4]

5. Whenever it becomes necessary to enforce the attendance of a civilian witness, as provided in the preceding paragraph, the judge-advocate will issue a warrant of attachment[5] directing and delivering it for execution to an officer designated by the department commander for the purpose. He will also deliver to this officer the subpœna, indorsed with affidavit of service (to be returned when the warrant is executed), and a certified copy of the order appointing the court-martial.

6. In executing such process it is lawful to use only such force as may be necessary to bring the witness before the court. Whenever force is actually required, the post commander nearest witness's residence will furnish a military detail sufficient to execute the process.[6]

7. If, in executing this legal process, the officer detailed for that purpose should be served with a writ of *habeas corpus* from any United States court, or by a United States judge, for the production of the witness,

[1] Par. 957, A. R.

[2] Such witness may also be prosecuted under act of Congress approved March 2, 1901; see page 129, *post*.

[3] Sec. 1202, R. S.

[4] 12 Opins. Atty. Gen., 501.

[5] *For form, see page 172, post.*

[6] *Par. 960, A. R.*

the writ will be promptly obeyed and "the person alleged to be illegally restrained of his liberty will be taken before the court from which the writ has issued, and a return made setting forth the reasons for his restraint. The officer upon whom such a writ is served will at once report, by telegraph, the fact of such service direct to The Adjutant General of the Army and to the commanding general of the department."[1]

8. If, however, the writ of *habeas corpus* is issued by any *State* court (or a State judge) it will be the officer's duty to make respectful return, in writing, informing the court that he holds the person named in the writ by authority of the United States pursuant to a warrant of attachment issued under section 1202 of the Revised Statutes of the United States by a judge-advocate of a lawfully convened court-martial, and that the Supreme Court of the United States has decided that State courts and judges are without jurisdiction in such cases.[2]

9. After having made the above return, it is the duty of the officer to obey the process of the United States, to hold the prisoner in custody under it, and to refuse obedience to the mandate or process of any other government. And, consequently, it is his duty not to take the prisoner, nor suffer him to be taken, before a State judge or court upon a writ of *habeas corpus* issued under State authority.[3]

10. "Every person not belonging to the Army of the United States who, being duly subpœnaed to appear as a witness before a general court-martial of the Army, willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or produce documentary evidence which such person may have been legally subpœnaed to produce, shall be deemed guilty of a misdemeanor, for which such person shall be punished on information in the district court of the United States; and it shall be the duty of the United States district

[1] **Par. 1009, A. R.** For general form for return, see page 188, *post*.

[2] **Pars. 1007** *and 1008, A. R.* For form for return, see page 189, post.

[3] *See cases cited in* "Form B," page 189, post.

attorney, on the certification of the facts to him by the general court-martial, to file an information against and prosecute the person so offending, and the punishment of such person, on conviction, shall be a fine of not more than five hundred dollars or imprisonment not to exceed six months, or both, at the discretion of the court: *Provided*, That this shall not apply to persons residing beyond the State, Territory, or District in which such general court-martial is held, and that the fees of such witness, and his mileage at the rates provided for witnesses in the United States district court for said State, Territory, or District shall be duly paid or tendered said witness, such amounts to be paid by the Pay Department of the Army out of the appropriation for compensation of witnesses: *Provided*, That no witness shall be compelled to incriminate himself or to answer any questions which may tend to incriminate or degrade him."[1]

11. If the attendance of a military witness, stationed at the post where the court is convened, is desired, and a formal notification is necessary, a summons in the form set out on page 169, *post*, will be transmitted to the witness through the post commander. If the military witness is stationed at another post the department commander will be requested to order the witness to attend.

12. "Every person not belonging to the Army of the United States,[2] who, in the Philippine Islands, being duly subpœnaed to appear therein as a witness before a general court-martial of said Army, willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or produce documentary evidence which

[1] Act of Congress approved March 2, 1901, sec. 1, page 129, *post*. If an officer who is charged with serving a subpœna pays the necessary fees and mileage to a witness, taking a receipt therefor, he is entitled to reimbursement. (Cir. 38, A. G. O., 1901.)

[2] Employees of the civil government of the Philippine Islands, paid from insular funds of the Islands, are held not to be in the employ of the United States. (Dec. Compt. Treas., Aug. 20, 1902; Cir. 45, A. G. O., 1902.)

such person may have been legally subpœnaed to produce, shall be punished by a fine of not more than five hundred dollars, United States currency, or imprisonment not to exceed six months, or both, at the discretion of the court, and it shall be the duty of the proper fiscal or prosecuting officer, on the certification of the facts to him by the general court-martial, to file in the proper court a complaint against and prosecute the person so offending: *Provided*, That one dollar and fifty cents, United States currency, for each day's attendance, and five cents, United States currency, per mile for going from his place of residence to the place of trial or hearing and five cents per mile for returning, shall be duly tendered to said witness: *Provided further*, That no witness shall be compelled to incriminate himself or to answer any question which may tend to incriminate him."[1]

13. With the consent of both parties the deposition of a military or civilian witness residing or stationed within the State, Territory, or District in which the court sits may be taken and read in evidence.

Sec. III. *To procure the testimony of witnesses stationed or residing without the State, etc., the following practice will be observed:*

1. A writ of attachment does not run beyond the State, Territory, or District in which the court-martial sits. The testimony of civilian witnesses residing beyond such State, Territory, or District will ordinarily be taken by deposition under the 91st Article of War; but this can not be done when it is necessary that they should be confronted with the accused. In such cases their testimony can only be taken on their voluntarily appearing before the court.

The testimony of military witnesses stationed or residing beyond[2] the State, Territory, or District in which the court sits will also ordinarily be taken by deposition.

[1] Act of the Philippine Commission (No. 1130), dated April 28, 1904; see also Cir 45, A. G. O., 1902.

[2] *See page 173, note 2, post.*

2. The method of procedure to obtain a deposition[1] is as follows:

The party, prosecutor or defendant, desiring the deposition, submits to the court a list of interrogatories to be propounded to the absent witness; the opposite party then prepares and submits a list of cross-interrogatories, a reasonable time being allowed for this purpose; redirect and recross-interrogatories are added, if desired; finally the court, having assented to the interrogatories thus submitted, adds such as, in its judgment, may be necessary to elucidate the whole of the witness's testimony.

The interrogatories having been accepted by the court, the judge-advocate will, if the witness is a civilian, prepare duplicate subpœnas[2] requiring the witness to appear in person, at a time and place to be fixed by the officer, military or civil, who is to take the deposition. If the name of this officer is not known, the space for it will be left blank.

The judge-advocate will then send the interrogatories and subpœnas and proper account for civilian witness[3] to the convening authority, with a request that the deposition be secured, the required data supplied in the account for civilian witness, and the post-office address given, so that the account may be certified by the judge-advocate and transmitted to the proper paymaster for payment.

Depositions may also be taken before the assembling of the court-martial, on interrogatories and cross-interrogatories or on reasonable notice, subject to exceptions when read in court.

3. If the deposition of a military witness is required, subpœnas will not be inclosed with the interrogatories, but the officer before whom the deposition is to be taken, or the officer who causes it to be taken, will direct the witness to appear at the proper time and place.

4. Judge-advocates of departments and of courts-martial, and the trial officers of summary courts, are

[1] For form, see page 173, *post*. [2] For form, see page 171, *post*.
[3] See forms 13 C and 13 B, Pay Department, *post*.

authorized to administer oaths and take depositions.[1] If none of these officers are available, any other army officer may be designated to see that the deposition is properly taken;[2] but the oath in such a case must be administered and the deposition authenticated by a civil officer empowered by law to administer oaths for general purposes.

5. Persons before whom depositions of civilian witnesses are taken for use before courts-martial will be paid the fees allowed by the law of the place where the depositions are taken.[3]

6. Upon the return of the interrogatories and deposition they will be submitted to the court by the president or judge-advocate. The papers will then be properly marked, appended to the record, and referred to in the proceedings, where all action upon the subject necessary for the information of the reviewing authority will be recorded.

7. Upon the receipt of the deposition, the judge-advocate will also complete and sign the ordinary "account for a civilian witness,"[4] certifying that the witness duly attended as a witness at a certain time and place and duly gave his deposition before a certain official named, and then transmit the account to the proper paymaster with a copy of the order convening the court.

8. In *capital* cases (*i. e.*, those in which the offense is punishable by death),[5] or in cases where the judge-advocate can certify "that the interests of justice demand that the witness shall testify in the presence of the court," the regular subpœnas will be made out by the judge-advocate, certified to as above, if necessary,

[1] Sec. 4, act of July 27, 1892; see G. O. 57, A. G. O., 1892.

[2] An officer so designated will, before serving the subpœna, complete it if necessary by inserting the name and official designation of the notary (or other official having authority to administer the oaths), before whom it is to be taken and the date on which and place where it is proposed to take it. When the deposition has been duly taken, he will certify to this fact and transmit it direct to the president of the court.

[3] Cir. 12, A. G. O., 1901.

[4] For forms see pages 176 and 180, *post*.

[5] In time *of peace desertion* is not a capital offense.

and transmitted to the department commander of the department where the court is convened, with a request that they be duly served on the witness, if a civilian. If the witness is in the military service the department commander will be requested to order him, or cause him to be ordered, to attend before the court.

9. An officer or enlisted man who receives a summons or subpœna to attend as a witness before any military court, board, civil court, or other competent tribunal, which is sitting beyond the limits of the department where he is serving, will, before starting to obey the same, forward it through the proper channel to his department commander, that necessary orders, or authority to obey such process may be given. In urgent cases, or when the public interest would be liable to suffer by delay, a post commander may authorize immediate departure, reporting his action and the reasons therefor to the department commander.

10. "Officers and enlisted men reporting as witnesses before a civil court should receive from the civil authorities the necessary expenses incurred in travel and attendance; neither mileage nor travel allowances will be paid in such cases by the War Department. If, however, it is absolutely necessary to furnish them transportation in kind to enable them to appear, as witnesses for the Government, before a civil court of the United States, an account of such expenditure, together with the evidence that they were properly subpœnaed and did attend the court, will be forwarded to the War Department for presentation to the Department of Justice. Officers providing such transportation will notify the court, or the marshal thereof, that it was furnished to enable the witnesses to perform the requisite journeys in obedience to the summons."[1]

[1] Par. 75, A. R.

FEES OF WITNESSES.[1]

1. A *civilian witness* before a court-martial is entitled, upon his discharge, to receive from the judge-advocate[2] a certificate, setting forth the fact of his having been summoned as a witness in the case, and the number of days of his attendance in that capacity before the court. To entitle a witness to the payment of fees, it is not essential that he should produce a formal subpœna, addressed to and complied with by him, or that he should have been formally summoned in the case. A strict observance, however, of section I, page 34, *ante*, would require the issue of formal subpœnas to witnesses on both sides, and it is the better practice for the judge-advocate to cause such to be served in each instance.[3]

2. "Civilians in the employ of the Government when traveling upon summons as witnesses before military courts are entitled to transportation in kind from their place of residence to the place where the court is in session and return. If no transportation be furnished, they are entitled to reimbursement of the cost of travel actually performed by the shortest usually traveled route, including transfers to and from railway stations, at rates not exceeding 50 cents for each transfer, and the cost of a double berth in a sleeping car or steamer when an extra charge is made therefor. They are also entitled to reimbursement of the actual cost of meals and rooms at a rate not exceeding $3 per day for each day actually and unavoidably consumed in travel or in attendance upon the court under the order or summons. No allowance will be made to them when attendance upon court does not require them to leave their stations."[4]

[1] When the employment of experts is necessary in a trial by court-martial, the judge-advocate will apply to the Secretary of War for authority to employ them and for a decision as to the compensation to be paid them.

[2] Or the summary court officer if the witness be before a summary court.

[3] A civilian witness must be duly subpœnaed and tendered fees under the act of Congress approved March 2, 1901, in order to maintain the prosecution authorized by that act. See page 37, par. 10, *ante*.

[4] *Par. 999, A. R.*

3. "A civilian, not in Government employ, duly summoned to appear as a witness before a military court or at a place where his deposition is to be taken for use before such court, will receive $1.50 for each day of his actual attendance before such court or for the purpose of having his deposition taken, and 5 cents a mile for going from his place of residence to the place of trial or of the taking of his deposition, and 5 cents a mile for returning, except as follows:[1]

"(a) In Porto Rico and Cuba, he will receive $1.50 a day while in attendance as above stated, and fifteen cents for each mile necessarily traveled over stage line or by private conveyance, and 10 cents for each mile over any railway or steamship line.

"(b) In Alaska, east of the one hundred and forty-first degree of west longitude, he will receive $2 a day while in attendance as above stated, and 10 cents a mile, and west of said degree $4 a day and 15 cents a mile.

"(c) In the States of Wyoming, Montana, Washington, Oregon, California, Nevada, Idaho, Colorado, and Utah, and in the Territories of New Mexico and Arizona, he will receive $3 a day for the time of actual attendance as above stated, and for the time necessarily occupied in going to and returning from the same, and 15 cents for each mile necessarily traveled over any stage line or by private conveyance, and 5 cents for each mile by any railway or steamship."[2]

4. "The charges for return journeys of witnesses will be made upon the basis of the actual charges allowed for travel to the court, and the entire account thus completed will be paid upon discharge from attendance, without waiting for completion of return travel."[3]

5. "The items of expenditure authorized in paragraphs 999 and 1000 (Army Regulations) will be set forth in detail and made a part of each voucher for reimbursement. No other items will be allowed. The certificate of the judge-advocate will be evidence of the fact and period of attendance and will be made upon the voucher."[4] The correctness of the items as to civilians

[1] These rates apply to the Philippine Islands. See Cir. 45 A. G. O., 1902.

[2] Par. 1000, A. R. A civilian not in Government employ, when furnished transportation on a transport or otherwise, is entitled to 57.142 per cent of 5 *cents per mile (equal to* 2.857 cents per mile). (Comp. Dec., Aug. 20, 1902.)

[3] *Par. 1002, A. R.*

[4] Id., 1003.

in Government employ will be attested by the affidavit of the witness, to be made when practicable before the judge-advocate.[1]

7. "Compensation to civilians in or out of Government employ for attendance upon civil courts is payable by the civil authorities."[2]

8. The fees of civilian witnesses, and the mileage of witnesses and fees of civil officers taking depositions, will be paid by the Pay Department.

EXAMINATION OF WITNESSES.

1. Witnesses are usually examined *apart from each other*, no witness being allowed to be present during the examination of another who is called before him. But this rule is not inflexible; it is in modern practice subject to the discretion of the court, nor is it ever so rigidly observed as to exclude the testimony of a person who has been present at the examination of other witnesses.

2. Courts-martial follow in general, so far as apposite, the common-law rules of evidence[3] as observed by the United States courts in criminal cases, but they are not required by statute to do so, and a certain latitude in the introduction of evidence and the examination of witnesses, by an avoidance of technical and restrictive rules, is permissible when it is in the interest of the administration of military justice, but no witness shall be compelled to incriminate himself or to answer any question which may tend to incriminate or degrade him.[4] The accused at his own request, but not otherwise, is competent to testify. His failure to make such a request shall not create any presumption against him.[5]

3. While the proper and usual order and sequence of examination of witnesses is outlined in the "form for record of a General Court-Martial," page 144, *post*, the

[1] Par. 1003, A. R. [2] *Id.*, 1004.

[3] Copies of any records or papers in the War Department or any of its bureaus, or at the headquarters of an army, corps, division, or brigade, or of a territorial division or department, if authenticated by the impressed stamp of the bureau or office of the War Department, or of the headquarters having custody of the originals (*e.g.*, "The Adjutant General's Office, Official Copy"), may be admitted in evidence equally with the originals thereof before any military court, commission or board, or in any administrative matter under *the War Department.* (G. O. 198, A. G. O., 1908.)

[4] *Act of Congress* approved March 2, 1901, sec. 1, page 129, post.

[5] *20 U. S. Stats.*, 30.

court may, in the interest of truth and justice, call or recall witnesses, or permit their recall at any stage of the proceedings; it may permit material testimony to be introduced by either party quite out of its regular order and place, or permit a case once closed by either or both sides to be reopened for the introduction of testimony previously omitted, if convinced that such testimony is so material that its omission would leave the investigation incomplete. In all such cases both parties must be present, and any testimony thus received would be subject to cross-examination and rebuttal by the party to whom it may be adverse.

4. Affidavits taken *ex parte* and not as depositions under the 91st Article of War are in no case admissible as evidence unless expressly consented to by the accused with full knowledge of his rights.

5. The accused, in addition to his own testimony, or where he has not testified, may make a verbal or written statement as to the case. The statement should not be sworn to, and if sworn to should not be received *as evidence* by the court.

FINDINGS.

1. The findings of the court will be governed by the evidence considered in connection with the pleas. The finding upon the charge should be consistent with that upon the specification.

2. The accused may be found guilty of parts of the specification, not guilty of the remainder, and then, if the specification still supports the charge, guilty of the charge.

3. If the evidence proves the commission of an offense less in degree than that specified, yet kindred to it, the court may except words of the specification, substitute others instead, pronounce the guilt and innocence of the substituted and excepted words, respectively, and then find the accused not guilty of the charge but guilty of the lesser kindred offense. Of this form of verdict the most familiar is the finding of guilty of absence without leave under a charge of desertion. In such a case, in its finding of guilty upon the specification, the court should in terms *except* the words "did desert," and "in *desertion,*" and substitute therefor, respectively, the *words "did absent himself* without leave from," and

"without leave." The finding upon the charge should regularly be "not guilty, but guilty of absence without leave, in violation of the 32d Article of War."[1]

4. Another legal and now common form of finding is where an accused is charged with a *specific* offense, made punishable by an Article of War, other than the 62d, and the court is of the opinion that, while the material allegations in the specification are proved, they do not fully sustain the charge as laid, but do clearly establish a breach of military discipline; in this case the accused may properly be found guilty of the specification, and not guilty of the charge, but guilty of "*conduct to the prejudice of good order and military discipline.*" It should be remembered, however, that the court can not in its finding legally substitute the 62d Article of War for any other, unless the proof fails to substantiate the specification under the original charge. The *reverse* of this form of finding has never been sanctioned. Thus where a charge is laid under the general article, a finding under any other article, or, where a charge is laid under a specific article, a finding under any other specific article, would be illegal.

5. In a case of virtual acquittal, to use the term "guilty" is improper; the correct expression is, "find the facts as charged, but attach no criminality thereto." "Guilty" should be employed only when the accused has been convicted of a crime deserving punishment.

PREVIOUS CONVICTIONS.[2]

1. Whenever a soldier is convicted of an offense for which a discretionary punishment is authorized, the

[1] It is beyond the power of a reviewing officer to change a finding by his own action. Thus where, in a case of desertion, the reviewing authority approved "so much only of the finding of guilty of desertion as convicted the accused of absence without leave," it was held that he thus substituted a finding of his own for that of the court, and that his action was unauthorized.

[2] By "previous conviction" is meant a conviction where the sentence has been approved by competent authority. This refers to all trials except *where the only officer present* sits as a summary court, when no approval *of the sentence is required* by law.

court will receive evidence of previous convictions, if there be any; such evidence being limited, except as provided in sec. 5, page 59, *post*, to previous convictions by courts-martial[1] of an offense or offenses within one year preceding the date of any offense charged and during the current enlistment. General, regimental, and garrison courts-martial will, after a finding of guilty, be opened for the purpose of ascertaining whether there is such evidence and, if so, of receiving it.[2] These courts will consider only such evidence of previous convictions as is referred to them by the convening authority.

2. Previous convictions by courts-martial must be proved by the records of previous trials and convictions, or by duly authenticated copies of such records, or by duly authenticated copies of the orders promulgating such trials.[3] The usual evidence of previous convictions by summary court is the copy of a summary court record furnished to company and other commanders, as required by paragraph 965, Army Regulations, or one furnished for the purpose and certified to be a true copy by the commanding officer or adjutant (at the headquarters where the original record of the summary court which tried the case is kept). When the proof produced is the copy furnished to the company or other commander, it will be returned to him and a copy of it attached to the record.[4]

3. The previous convictions are not limited to those for offenses similar to the one for which the accused is on trial. The object is "to see if the prisoner is an old offender, and therefore less entitled to leniency than if on trial for his first offense." This information might not be fully obtained if evidence of previous convictions of similar offenses only were laid before the court. It has no bearing upon the question of guilt of the particular charge on trial, but only upon the amount and

[1] The introduction of evidence of convictions by civil courts is not authorized.

[2] Executive order of June 12, 1905, page 58, Art. III, sec. 2, *post*.

[3] *Id., page 58, Art. III, sec. 1, post.*

[4] *Par. 971, A. R., and "Instructions" on Summary Court Record, page 158, post.*

kind of punishment to be awarded, and to this end it is proper that all previous convictions should be known.

PUNISHMENT.

1. **Punishment,** under the Articles of War, is either fixed or is left to the discretion of a court-martial. If the punishment is prescribed in the article violated, any other punishment than that prescribed is illegal. Before pronouncing sentence, the court should, therefore, in case of any uncertainty, examine the article violated to see what punishment may be legally awarded, and in awarding punishment it should be remembered that the proper amount of punishment is the least by which discipline can be efficiently maintained.

2. *For officers*, the legal punishments by courts-martial, depending on the nature of the offense, are death, dismissal, suspension from rank, command, or duty, with or without loss of pay or part of pay, loss of rank, imprisonment, fine or forfeiture of pay, reprimand, and confinement to limits of post or reservation.

3. *For soldiers*, the legal punishments, depending on the character of the offense and the jurisdiction of the court, are, death, confinement,[1] confinement on bread-and-water diet, solitary confinement, hard labor, ball and chain, forfeiture of pay and allowances, dishonorable discharge from service,[2] for first-class privates reduction to second-class privates, and reprimand; for noncommissioned officers, reduction to the ranks also,[3] and for "candidates for promotion," deprivation of all rights and privileges arising from a certificate of eligibility.[4]

4. "No person in the military service shall be punished by flogging, or by branding, marking, or tattooing on the body."[5]

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[1] Confinement without hard labor should never be imposed.

[2] A dishonorable discharge is an entire expulsion from the Army and covers all unexpired enlistments.

[3] "Post noncommissioned staff officers and hospital sergeants (1st class), though liable to discharge for inefficiency or misconduct, will not be reduced." (Pars. 102 and 1426, A. R.)

[4] *Act of July 30, 1892*; see G. O. 79, A. G. O., 1892.

[5] *98th A. W.*

5. Military prisoners will not be punished by being required to carry a heavy log. Some other punishment can be found equally effective and not open to the objections urged against this method.

6. Punishment by ball and chain will be imposed only in extreme cases.[1]

7. "Sentences imposing tours of guard duty are forbidden."[2]

8. Solitary confinement, or confinement on bread-and-water diet, shall not exceed fourteen days at a time, nor be again enforced until a period of fourteen days has elapsed. Nor shall such confinement exceed eighty-four days in any one year.[3]

9. A court-martial can direct a forfeiture only in favor of the United States, and can not assign the pay of a soldier to any other person; nor can a soldier be required to receipt for money paid without his consent.

10. If a soldier be brought to trial for absence without leave and convicted, or for desertion and is convicted of absence without leave only, the soldier will be charged with *the expense of transportation* of himself and guard to his proper station. It is not necessary for the court to include this charge in its sentence. The company commander will make the charge without the action of the court.[4]

11. "If a soldier be brought to trial under a charge of desertion and acquitted, or convicted of absence without leave only, any amount paid as a reward for his arrest will not be stopped against his pay unless, in case of conviction of absence without leave, the sentence of the court shall so direct. The sentence in such case should direct the charge to take the form of a stoppage, not a forfeiture, thus allowing the amounts to be credited as a reimbursement."[5]

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[1] See page 69, par. 3, *post*.

[2] Par. 973, A. R.

[3] See page 60, *post*.

[4] Par. 126, A. R.

[5] Par. 127, A. R. This paragraph is not affected by the order of the President prescribing the limit of punishment. See page 53, *post*, note.

12. "No person in the military service shall, under the sentence of a court-martial, be punished by confinement in a penitentiary, unless the offense of which he may be convicted would, by some statute of the United States, or by some statute of the State, Territory, or District in which such offense may be committed, or by the common law, as the same exists in such State, Territory, or District, subject such convict to such punishment."[1]

13. The 97th Article of War limits the discretion of the court only as "to imprisonment in the penitentiary, and it has been nowhere provided that the punishment may not in other respects be greater than the civil courts could inflict."[2] Notwithstanding this, a court-martial should properly consult the statute governing the civil courts, in order to determine a reasonable measure of punishment for the offense.

14. The most common offenses punishable by confinement in a penitentiary are those mentioned in Article 60, and robbery, grand larceny, embezzlement, forgery, burglary, arson, mayhem, manslaughter, assault with intent to kill, rape, or assault with intent to commit rape. Any of these offenses, when committed to the prejudice of good order and military discipline, either in time of peace or war, are punishable as stated.

MAXIMUM LIMITS OF PUNISHMENT.[3]

The act of September 27, 1890, provides: "That whenever by any of the Articles of War for the government of the Army the punishment on conviction of any mili-

[1] 97th A. W. The Philippine Islands are construed to be a Territory within the meaning of the Articles of War.

[2] *Ex parte* Mason, 105 U. S., 696. See G. O. 61, A. G. O., 1882.

[3] These limits apply to the punishment of enlisted men only, 183 U. S., 365.

tary offense is left to the discretion of the court-martial, the punishment therefor shall not, in time of peace, be in excess of a limit which the President may prescribe."

The last order of the President prescribing limits of punishment is as follows:

EXECUTIVE ORDER.

The Executive Order, dated June 12, 1905, establishing limits of punishment for enlisted men of the Army, under an act of Congress approved September 27, 1890, and which was published in General Orders, No. 96, War Department, Washington, June 19, 1905, is amended so as to prescribe, for time of peace, as follows:[1]

ARTICLE I.

In all cases of desertion the sentence may include dishonorable discharge and forfeiture of pay and allowances.

SECTION 1. Subject to the modifications authorized in section 2 of this article, the maximum limit of the term of confinement (at hard labor) for desertion committed in time of peace shall be three (3) years.

SEC. 2. The foregoing limitations are subject to modification under the following conditions:

(*a*) The punishment of a deserter may be increased by one year of confinement at hard labor in consideration of each previous conviction of desertion.

(*b*) The punishment for desertion when joined in by two or more soldiers in the execution of a conspiracy, or for desertion in the presence of an outbreak of Indians or of any unlawful assemblage which the troops may be opposing, shall not exceed dishonorable discharge, forfeiture of all pay and allowances, and confinement at hard labor for five years.

[1] This order is published in G. O. 204, War Dept., December 15, 1908

ARTICLE II.

Except as herein otherwise indicated, punishments shall not exceed the limits prescribed in the following table:

Offenses.	Limits of punishment.
UNDER 17TH ARTICLE OF WAR.	
Selling horse or arms, or both.	Dishonorable discharge, forfeiture of all pay and allowances, and confinement at hard labor for three years.
Selling accouterments or clothing.	Dishonorable discharge, forfeiture of all pay and allowances, and confinement at hard labor for one year.
Losing or spoiling horse or arms through neglect.	Six months' confinement at hard labor and forfeiture of $10 per month for the same period; for noncommissioned officer, reduction in addition thereto.
Losing or spoiling accouterments or clothing through neglect.	Three months' confinement at hard labor and forfeiture of $10 per month for the same period; for noncommissioned officer, reduction in addition thereto.
UNDER 20TH ARTICLE OF WAR.	
Behaving himself with disrespect to his commanding officer	Six months' confinement at hard labor and forfeiture of $10 per month for the same period; for noncommissioned officer, reduction in addition thereto.
UNDER 24TH ARTICLE OF WAR.	
Refusal to obey or using violence to officer or noncommissioned officer while quelling quarrels or disorders.	Dishonorable discharge, with forfeiture of all pay and allowances and confinement at hard labor for two years.
UNDER 32D ARTICLE OF WAR.	
Absence without leave[1]—	
For not more than six hours.	Forfeiture of $2; corporal, $3; sergeant, $4; 1st sergeant or noncommissioned officer of higher grade, $5.
For more than six to twenty-four hours, inclusive.	Forfeiture of $5; corporal, $6; sergeant, $7; 1st sergeant or noncommissioned officer of higher grade, $10.
For more than one to ten days, inclusive.	Forfeiture of $10 and ten days' confinement at hard labor; for noncommissioned officer, reduction in addition thereto.
For more than ten days.	Dishonorable discharge and forfeiture of all pay and allowances and six months' confinement at hard labor.

[1] Upon trial for desertion and conviction of absence without leave only, the court may, in addition to the limit prescribed for such absence, award a stoppage of the amount paid as reward for the apprehension and delivery of the accused to the military authorities. See par. 11, page 60, ante.

Offenses.	Limits of punishment.
UNDER 33D ARTICLE OF WAR.	
Failure to repair at the time fixed, to the place appointed, etc.—	
For reveille or retreat roll call and 11 p. m. inspection.	Forfeiture of $1; corporal, $2; sergeant, $3; 1st sergeant, $4.
For assembly of guard detail.	Forfeiture of $5; corporal, $8; sergeant, $10.
For guard mounting (by musician detailed for guard).	
For guard mounting (by musician not detailed for guard).	
For assembly of fatigue detail.	
For parade	Forfeiture of $2; corporal, $3; sergeant, $5.
For inspection and muster, weekly or monthly inspection.	
For target practice	
For drill	
For stable duty	
For athletic exercises	
For post school	
UNDER 38TH ARTICLE OF WAR.	
Found drunk—	
On guard	Six months' confinement at hard labor and forfeiture of $10 per month for the same period; for noncommissioned officer, reduction in addition thereto.
On duty as head cook	Forfeiture of $20.
On extra or special duty.	
At formation of company for drill or on drill.	Forfeiture of $12; for noncommissioned officer, reduction and forfeiture of $20.
At target practice	
At formation of company for dress parade or on dress parade.	
At reveille or retreat roll call.	
At inspection and muster, weekly or monthly inspection.	
At inspection of company guard detail or at guard mounting.	
At stable duty	
On fatigue	

Offenses.	Limits of punishment.
UNDER 40TH ARTICLE OF WAR.	
Quitting guard	Six months' confinement at hard labor and forfeiture of $10 per month for the same period; for noncommissioned officer, reduction in addition thereto.
UNDER 51ST ARTICLE OF WAR.	
Persuading soldiers to desert	Dishonorable discharge, forfeiture of all pay and allowances, and one year's confinement at hard labor.
UNDER 60TH ARTICLE OF WAR	Dishonorable discharge, forfeiture of all pay and allowances, and four years' confinement at hard labor.
UNDER 62D ARTICLE OF WAR.	
Manslaughter	Dishonorable discharge, forfeiture of all pay and allowances, and ten years' confinement at hard labor.
Assault, with intent to kill	Dishonorable discharge, forfeiture of all pay and allowances, and ten years' confinement at hard labor.
Burglary	Dishonorable discharge, forfeiture of all pay and allowances, and seven years' confinement at hard labor
Forgery	Dishonorable discharge, forfeiture of all pay and allowances, and four years' confinement at hard labor.
Perjury	Dishonorable discharge, forfeiture of all pay and allowances, and four years' confinement at hard labor.
False swearing	Dishonorable discharge, forfeiture of all pay and allowances, and two years' confinement at hard labor.
Robbery	Dishonorable discharge, forfeiture of all pay and allowances, and seven years' confinement at hard labor.
Larceny or embezzlement of property [1]—	
Of the value of more than $100.	Dishonorable discharge, forfeiture of all pay and allowances, and four years' confinement at hard labor.
Of the value of $100 or less and more than $50.	Dishonorable discharge, forfeiture of all pay and allowances, and three years' confinement at hard labor.
Of the value of $50 or less and more than $20.	Dishonorable discharge, forfeiture of all pay and allowances, and two years' confinement at hard labor.
Of the value of $20 or less	Dishonorable discharge, forfeiture of all pay and allowances, and one year's confinement at hard labor.

[1] In specifications to charges of larceny or embezzlement the value of the property shall be stated.

Offenses.	Limits of punishment.
UNDER 62D ARTICLE OF WAR—Continued.	
Fraudulent enlistment, procured by false representation or concealment of a fact in regard to a prior enlistment or discharge, or in regard to conviction of a civil or military crime.	Dishonorable discharge, forfeiture of all pay and allowances, and confinement at hard labor for one year.
Fraudulent enlistment, other cases of.	Dishonorable discharge, forfeiture of all pay and allowances, and confinement at hard labor for six months.
Disobedience of orders, involving willful defiance of the authority of a noncommissioned officer in the execution of his office.	Six months' confinement at hard labor and forfeiture of $10 per month for the same period; for noncommissioned officer, reduction in addition thereto.
Using threatening or insulting language or behaving in an insubordinate manner to a noncommissioned officer while in the execution of his office.	Two months' confinement at hard labor and forfeiture of $10 per month for the same period; for noncommissioned officer, reduction in addition thereto.
Absence from fatigue duty	Forfeiture of $4; corporal, $5; sergeant, $6.
Absence from extra or special duty.	Forfeiture of $4; corporal, $5; sergeant, $6.
Absence from duty as company, general mess, or hospital head cook.	Forfeiture of $10.
Introducing liquor into post, camp, or quarters in violation of standing orders.	Forfeiture of $3, for noncommissioned officer, reduction and forfeiture of $5.
Drunkenness at post or in quarters.	Forfeiture of $3; for noncommissioned officer, reduction and forfeiture of $5.
Drunkenness and disorderly conduct, causing the offender's arrest and conviction by civil authorities at a place within ten miles of his station.	Forfeiture of $10 and seven days' confinement at hard labor; for noncommissioned officer, reduction and forfeiture of $12.
Noisy or disorderly conduct in quarters.	Forfeiture of $1; corporal, $7; sergeant, $10.
Drunk and disorderly in post or quarters.	Forfeiture of $7; for noncommissioned officer, reduction and forfeiture of $10.
Abuse by noncommissioned officer of his authority over an inferior.	Reduction, three months' confinement at hard labor, and forfeiture of $10 per month for the same period.
Noncommissioned officer encouraging gambling.	Reduction and forfeiture of $5.
Noncommissioned officer making false report.	Reduction, forfeiture of $8, and ten days' confinement at hard labor.
Sentinel allowing a prisoner under his charge to escape through neglect.	Six months' confinement at hard labor and forfeiture of $10 per month for the same period.
Sentinel willfully suffering prisoner under his charge to escape.	Dishonorable discharge, forfeiture of all pay and allowances, and one year's confinement at hard labor.

Offenses.	Limits of punishment.
UNDER 62D ARTICLE OF WAR—Continued.	
Sentinel allowing a prisoner under his charge to obtain liquor.	Two months' confinement at hard labor and forfeiture of $10 per month for the same period.
Sentinel or member of guard drinking liquor with prisoners.	Two months' confinement at hard labor and forfeiture of $10 per month for the same period.
Disrespect or affront to a sentinel.	Two months' confinement at hard labor and forfeiture of $10 per month for the same period; for noncommissioned officer, reduction in addition thereto.
Resisting or disobeying sentinel in lawful execution of his duty.	Six months' confinement at hard labor and forfeiture of $10 per month for the same period; for noncommissioned officer, reduction in addition thereto.
Lewd or indecent exposure of person.	Three months' confinement at hard labor and forfeiture of $10 per month for the same period; for noncommissioned officer, reduction in addition thereto.
Committing nuisance in or about quarters.	
Breach of arrest in quarters	One month's confinement at hard labor and forfeiture of $10; for noncommissioned officer, reduction in addition thereto.

ARTICLE III.

The introduction and use of evidence of previous convictions is subject to the following regulations:

SECTION 1. Such evidence shall be limited, except as provided in section 5 of this article, to previous convictions by courts-martial of an offense or offenses within one year preceding the date of commission of any offense charged and during the current enlistment. These convictions must be proved by the records of previous trials and convictions, or by duly authenticated copies of such records, or by duly authenticated copies of the orders promulgating such trials and convictions. Charges forwarded to the authority competent to order a general court-martial, or submitted to a summary, garrison, or regimental court-martial, must be accompanied by the proper evidence of previous convictions.

SEC. 2. Whenever a soldier is convicted of an offense for which a discretionary punishment is authorized, the court will receive evidence of previous convictions (see section 1 of this article), if there be any. General, regi-

mental, and garrison courts-martial will, after a finding of guilty, be opened for the purpose of ascertaining whether there is such evidence and, if so, of receiving it.

SEC. 3. *Previous convictions in connection with inferior court offenses.*—When a soldier is convicted of an offense the punishment for which under Article II of this order or the custom of the service does not exceed three months' confinement at hard labor and forfeiture of three months' pay, the punishment so authorized may, upon proof of previous convictions (see section 1 of this article) be increased one-half for each of such convictions *up to the limit* of three months' confinement at hard labor and forfeiture of three months' pay, and, for noncommissioned officer or first-class private, reduction in addition thereto. In case of a soldier whose total length of service does not exceed one year, upon proof of five or more of such convictions, if the total of the sentences, substitutions considered (see Article VII), equals or exceeds forfeiture of $50 or confinement at hard labor for 100 days, the limit of punishment shall be dishonorable discharge, forfeiture of all pay and allowances, and confinement at hard labor for three months; but in cases where the length of service exceeds one year, the limit of punishment shall be as just stated upon proof of five or more previous convictions, whatever the character of the sentences may have been, but if dishonorable discharge be not adjudged, the limit shall be three months' confinement at hard labor and forfeiture of three months' pay, and, for a noncommissioned officer or first-class private, reduction in addition thereto.

SEC. 4. *Previous convictions in connection with general court-martial offenses.*—When the conviction is for an offense punishable under Article II of this order or the custom of the service with a greater punishment than three months' confinement at hard labor and forfeiture of three months' pay, such punishment shall not be increased by reason of previous convictions, except as hereinafter specified; but evidence of those described in section 1 of this article will be submitted to the court to aid it to determine upon the proper measure of punishment subject to the limit already authorized. In the case of a soldier whose total length of service does not exceed one year, upon proof of five or more of such convictions, if the total of the sentences, substitutions considered (see Article VII), equals or exceeds forfeiture of $50 or confinement at hard labor for 100 days, the

court may, if the authorized limit does not include dishonorable discharge, adjudge dishonorable discharge and forfeiture of all pay and allowances with the authorized confinement; but in cases where the length of service exceeds one year, the limit of punishment shall be as just stated, upon proof of five or more previous convictions, whatever the character of the sentences may have been.

SEC. 5. On a conviction of desertion evidence of convictions of previous desertions may also be introduced, irrespective of the enlistment or of the period which may have elapsed since such conviction or convictions.

SEC. 6. When a noncommissioned officer is convicted of an offense not punishable with reduction, he may, upon proof of one previous conviction within the prescribed period (see section 1 of this article), be sentenced to reduction in addition to the punishment already authorized.

SEC. 7. First-class privates may be reduced to second-class privates in all cases where for like offenses on the part of noncommissioned officers their reduction in grade is now authorized.

ARTICLE IV.

When a soldier shall, on one arraignment, be convicted of two or more offenses, none of which is punishable under Article II of this order or the custom of the service with dishonorable discharge, but the aggregate term of confinement for which, as specified in said article, may exceed six months, dishonorable discharge with forfeiture of pay and allowances may be awarded in addition to the authorized confinement.

ARTICLE V.

If, in any case where the limit of punishment is dishonorable discharge, forfeiture of all pay and allowances, and confinement at hard labor for a stated number of months, dishonorable discharge be not adjudged, the limit of forfeiture shall be all pay due and to become due during the prescribed limit of confinement.

ARTICLE VI.

This order prescribes the *maximum* limit of punishment for the offenses named, and this limit is intended

for those cases in which the severest punishment should be awarded. In other cases the punishment should be graded down according to the extenuating circumstances. Offenses not herein provided for remain punishable as authorized by the Articles of War and the custom of the service.

ARTICLE VII.

Substitutions for punishment named in Article II of this order are authorized at the discretion of the courts at the following rates:

Two days' confinement at hard labor for one dollar forfeiture, or the reverse; one day's solitary confinement on bread and water diet for two days' confinement at hard labor or for one dollar forfeiture; provided that a noncommissioned officer not sentenced to reduction shall not be subject to confinement; and provided that solitary confinement shall not exceed fourteen days at one time, nor be repeated until fourteen days have elapsed, and shall not exceed eighty-four days in one year.

This order shall become operative in the United States and contiguous Territories thirty days after its date, and elsewhere within the jurisdiction of the United States sixty days from its date.

THEODORE ROOSEVELT.

THE WHITE HOUSE,
November 25, 1908.

SENTENCE.[1]

1. When in any case the punishment is, by the Articles of War, left to the discretion of the court-martial, the court will, before proceeding to award the punishment, ascertain whether a limit has been fixed by the foregoing executive order.[2] Those members desiring to propose a sentence usually write it on a slip of paper and hand it to the president. The president reads the proposed sentences to the court and the members vote on them in order, beginning with the lightest, until a

[1] For forms for sentences see page 168, *post*.

[2] "When a sentence of confinement or forfeiture is in excess of the legal limit, the part within the limit is legal and may be executed." (Par. 977, A. R.)

majority agree upon a sentence. In a case where a punishment is fixed, the members vote upon a sentence awarding this punishment. Upon a death sentence two-thirds of the members must concur (the record so explicitly stating), and no person can be sentenced to death except in cases expressly mentioned in the Articles of War, or in section 1343, Revised Statutes, as thus punishable.[1]

3. A general court-martial may sentence a soldier to confinement in a penitentiary for any offense which may be thus punished "by some statute of the United States, or by some statute of the State, Territory, or District in which such offense may be committed, or by the common law, as the same exists in such State, Territory, or District."[2] When, therefore, the sentence of such a court-martial prescribes imprisonment, the court will state therein whether the prisoner shall be confined "in a penitentiary[3] or in some place under military jurisdiction being guided in its determination by the 97th Article of War. Where from any cause there is a doubt in the mind of the court whether the offense is punishable by penitentiary confinement, such words as "in such place as the reviewing authority may direct" will be used in the sentence.[4]

N4. "When a sentence imposes forfeiture of pay, or of a stated portion thereof, for a certain number of months, it stops for each of those months the amount stated. Thus: 'Ten dollars of monthly pay for one year' would be a stoppage of $120. When the sentence is silent as to the date of commencement of forfeiture of pay, the forfeiture will begin with the period for which pay has accrued since last payment. A forfeiture not limited by the sentence to any particular month or months or

[1] 96th A. W.

[2] 97th *id.* See note 1, page 51, *ante.*

[3] Unless the laws of the State, Territory, etc., in which the court is convened are at hand, it is impossible for the court to determine in all cases whether or not under the 97th Article of War, the offender is punishable by penitentiary confinement.

[4] Par. 974, A. R.

other space of time, but expressed simply as a forfeiture of so many months' pay, or of a certain amount of pay, is legally chargeable against the pay due and payable at the next payment, and the balance, if any, against pay accruing thereafter, until the forfeiture is fully satisfied, but the rate of forfeiture will be the rate of pay the soldier is entitled to receive at the date of the promulgation of the sentence."[1]

5. "Notwithstanding a sentence contemplates payment of a stated sum to a soldier upon his release from confinement, it can not be made unless there is a sufficient balance to his credit after all authorized stoppages are deducted."[2]

6. "A sentence adjudging a dishonorable discharge to take effect at such period during a term of confinement as may be designated by the reviewing authority, is illegal."[3]

RECORD OF PROCEEDINGS.[4]

1. Every court-martial will keep an accurate record[5] of its proceedings. The record in each case will be complete in itself, and will contain a copy of the order appointing the court. It will be authenticated by the signatures of the president and judge-advocate, the latter affixing his signature to each day's proceedings. Whenever, by reason of the death or disability of the judge-advocate occurring after the court has decided on the sentence, the record can not be authenticated by his signature it must show that it has been formally approved by the court and must be authenticated by the signature of the president.[6] The record must show that the court was organized as the law requires, that the prisoner was asked if he wished to object to any

[1] Par. 985, A. R.

[2] *Id.*, 987.

[3] *Id.*, 983.

[4] For form of record for general court-martial see page 144, *post*.

[5] "When records of trial by general court-martial are written on the typewriter, the copyable ribbon will be used when practicable." (Par. 989, A. R.)

[6] *Par. 988, A. R.*

member and his answer to such question, and that the members of the court and the judge-advocate were duly sworn.

2. The reading of previous proceedings and of testimony for approval will be dispensed with, unless for special reason considered necessary by the court, or a witness desires to have certain testimony read for correction.[1]

3. All orders modifying the detail of the court and issued after its original organization must be incorporated in the record. The record should also note the fact of a new member taking his seat, or a new judge-advocate commencing to officiate, according to orders, on a certain day. (But, see page 29, par. 4, *ante*.)

4. The entire proceedings will be spread upon the record; all orders and rulings of the court; all motions, propositions, objections, arguments, statements, etc., of the judge-advocate or the accused; the testimony of each witness, as nearly as possible in his own language; in short, every feature of the proceedings material to a complete history of the case and to a correct understanding of every point of the same by the reviewing authority will be recorded at length. Testimony taken before regimental or garrison courts-martial will not be reduced to writing.[2]

5. Where a soldier deserts and, without a discharge from his original term, enlists under a different name, the specifications to the charges of desertion and fraudulent enlistment will set forth the offenses under the original name and organization, and include the other name, etc., under an *alias*, and the arraignment, findings, sentence, and action of the reviewing authority will also give the original name and organization, followed by the other name, etc., under an *alias*, *e. g.*, Private A—— B——, Troop ——, —— U. S. Cavalry (*original name, etc.*), *alias* Private C—— D——, Co. ——, ——, U. S. Infantry (*other name, etc.*).[3]

[1] Cir. No. 27, A. G. O., 1897. [2] Par. 988, A. R.

[3] Cir. No. 76, W. D., 1908. See form for general order promulgating trial and sentence, page 186, *post*.

6. Although, since the passage of the act of Congress of July 27, 1892, "to amend the Articles of War, etc.," it is desirable that the record of a court-martial should show that when it sat in closed session the judge-advocate withdrew, it will not vitiate the proceedings if this is not expressly stated. When the record shows that the court was closed, the presumption is that it was closed in accordance with the requirements of law.

7. The "statement of service" referred to on page 19, paragraph 3, *ante*, will not be introduced in evidence nor made a part of the record of the trial, but will be considered by the court and shown to the accused, with a view to its correction by the introduction of evidence should it be required. The statement will be forwarded with the record for file in the office of the Judge-Advocate-General.[1]

8. A recommendation to clemency will not be embraced in the body of the sentence; but will be appended to the record after any exhibits referred to in the proceedings. Only those members who concur in a recommendation should sign it.

REVISION OF RECORD.[2]

1. "When the record of a court exhibits error in preparation, or seemingly erroneous conclusions, the reviewing authority may reconvene the court for a reconsideration of its action, pointing out defects. Should the court concur in the views submitted, it will proceed by amendment to correct its error, and may modify or completely change its findings. A reopening of the case, by calling or recalling witnesses, is illegal."[3]

2. An amendment can be made by the court only when duly reconvened for the purpose, and when made must be the *act of the court as such*.[4] A correction made by the president or other member, or by the judge-

[1] See also par. 2, page 26, *ante*, as to account of reporter.

[2] For form for revision see page 156, *post*.

[3] Par. 992, A. R.

[4] 23 Opin. Atty. Genl., 23; see G. O. 21, A. G. O., 1900.

advocate independently of the court, and by means of an erasure or otherwise, is unauthorized. If omissions in the record are to be supplied, the page and line on which they occur will be stated and the corrections given in full. The original record will not be interlined nor altered in any way.

REVIEWING AUTHORITY.

1. "No sentence of a court-martial shall be carried into execution until the same shall have been approved by the officer ordering the court, or by the officer commanding for the time being."[1]

2. The officer having authority to confirm the sentence of a court-martial will state at the end of the proceedings in each case his decisions and orders.[2]

3. "All sentences of a court-martial may be confirmed and carried into execution by the officer ordering the court, or by the officer commanding for the time being, where confirmation by the President, or by the commanding general in the field, or commander of the department," is not required by the Articles of War.[3] In time of peace, sentences directing the dismissal of an officer or inflicting the punishment of death require confirmation by the President.[4] Proceedings involving either dismissal or death will therefore (except in time of war, in cases mentioned in the 105th and 107th Articles of War) be forwarded by the convening authority, *after approval*,[5] direct to the Judge-Advocate-General for the action of the President.

4. A military commander can not delegate to an inferior or other officer his function as reviewing authority as conferred by the 104th and 109th Articles of War

[1] 104th A. W.; see par. 193, A. R.

[2] Par. 990, A. R.

[3] 109th A. W. For requirement of regulations as to "Officer commanding for the time being," see par. 193, A. R.

[4] 105th, 106th, and 108th *id.*

[5] The convening authority, before forwarding the case, should complete the sentence by designating the place of confinement, where confinement is imposed by the sentence, as in cases where no confirmation is required.

Nor can he authorize a staff or other officer to subscribe for him his decision and orders on the proceedings.

5. Every officer authorized to order a court-martial has power to pardon or mitigate any punishment adjudged by it,[1] except that of death,[2] or the dismissal of an officer.[3]

6. "The power to remit or mitigate punishment imposed by a court-martial, vested in the authority who appointed the court or the corresponding authority under whose jurisdiction the sentence is being executed, extends only to unexecuted portions of a sentence. If the punishment be one imposed by a general court-martial, it may be remitted or mitigated only by an officer competent to order a general court-martial and under whose jurisdiction the sentence is being executed. The fact that a soldier has been dishonorably discharged through his sentence does not affect this power. An application for clemency in case of a prisoner sentenced to confinement in a penitentiary, or in the United States Military Prison or any branch thereof, will be forwarded to the Secretary of War for the action of the President. A military prisoner sentenced to confinement in a penitentiary, or in the United States Military Prison or any branch thereof, will, so far as concerns the exercise of clemency, be considered to have passed beyond the jurisdiction of a division or department commander from the date of the approval of his sentence, without regard to the fact of his being temporarily retained within the command of the division or department commander pending transfer to a penitentiary, or the United States Military Prison or any branch thereof. The power to commute sentences imposed by military tribunals, not being vested in military commanders, can be exercised by the President only."[4]

7. "Any officer who has authority to carry into execution the sentence of death, or of dismissal of an officer, may suspend the same until the pleasure of the President shall be known; and, in such case, he shall

[1] 112th A. W. [2] 105th *id.*
[3] *106th id.* [4] Par. 951, A. R.

immediately transmit to the President a copy of the order of suspension, together with a copy of the proceedings of the court."[1]

8. While a reviewing authority may remit or mitigate a sentence, he can not change it so as to impose a punishment of a different nature; thus, he can not change a sentence of dishonorable discharge awarded an enlisted man to confinement at hard labor;[2] but a legal sentence of dishonorable discharge, forfeiture of all pay and allowances due, and confinement at hard labor for a definite period may be mitigated by the authority designated in paragraph 6, page 66, *ante*, to confinement at hard labor and forfeiture of all pay and allowances for a period not to exceed the period of confinement awarded in the sentence.[3]

9. "The authority which has designated the place of confinement, or higher authority, may change the place of confinement of any prisoner under the jurisdiction of such authority;"[4] but "when the court has sentenced a prisoner to confinement at a post, no power is competent to increase the punishment by designating a penitentiary as the place of confinement."[5] When a penitentiary has been erroneously designated the reviewing authority may disapprove it and designate a proper place.

10. When general courts-martial have properly sentenced soldiers to confinement in a penitentiary,[6] "department commanders will designate the United States Penitentiary at Leavenworth, Kans., as the place of such execution of sentence, in cases in which the term of confinement imposed is more than one year. If any State or Territory within a military department

[1] 111th A. W.

[2] As to authority of reviewing officer to change finding, see page 47, note 1, *ante*.

[3] Cir. 48, A. G. O., 1900.

[4] Par. 980, A. R.

[5] *Id.*, 976. A punishment of confinement in a penitentiary, when legal, may be mitigated to confinement at a military post.

[6] See *page 51*, par. 12, *ante*.

has made provision by law for the confinement of such prisoners in its penitentiaries, the department commander, with the approval of the Secretary of War, may designate one as the place of execution of sentence."[1]

11. "When a sentence of confinement or forfeiture is in excess of the legal limit, the part within the limit is legal and may be executed."[2]

12. "The time at which a dishonorable discharge is to take effect, as fixed by a sentence, can not be postponed by the reviewing officer."[3]

13. "A sentence to confinement, with or without forfeiture of pay, can not become operative prior to the date of confirmation. If it be proper to take into consideration the length of confinement to which the prisoner has been subjected previous to such confirmation, it may be done by mitigation of sentence."[4]

14. "An order remitting a forfeiture of pay operates only on the pay to become due on and after the date of the order."[5]

15. "The order promulgating the proceedings of a court and the action of the reviewing authority will, when practicable, be of the same date. When this is not practicable, the order will give the date of the action of the reviewing authority as the date of the beginning of the sentence. This does not apply to sentences of forfeiture of all pay and allowances. A soldier awaiting result of trial will not be paid before the result is known."[6]

16. "Trials by general courts-martial, including so much of the proceedings as will give the charges and specifications, the pleadings, findings, and sentence, and the action and remarks of the reviewing authority, will be announced in general orders issued from the War Department or from the proper division or department headquarters. If the charges contain matter which for any reason is unfit for publication, such matter will be

[1] Par. 975, A. R. [2] *Id.*, 977. [3] *Id*, 984.
[4] *Id.*, 981. [5] *Id.* 986. [6] *Id.*, 979.

omitted from the order, but a copy thereof will be promptly furnished by the reviewing authority to the commanding officer of the post at which the officer or soldier is confined, to be included with the papers required by paragraph 946 to be sent to the commanding officer of the post or military prison where the sentence of confinement is to be executed."[1]

CONFINEMENT AFTER TRIAL.

1. "Enlisted men * * * who have been tried will, prior to the promulgation of the result, be designated as 'awaiting result of trial;' enlisted men serving sentences of confinement, not involving dishonorable discharge, will be designated as 'garrison prisoners;' those sentenced to dishonorable discharge and to terms of confinement at military posts or elsewhere will be designated as 'military convicts.'"[2]

2. "Prisoners awaiting trial by, or undergoing sentence of, general court-martial and those confined for serious offenses will, if practicable, be kept apart from those confined by sentence of an inferior court, or for minor offenses. Enlisted men awaiting trial or awaiting result of trial will not be sent to work with garrison prisoners or military convicts if it can be avoided, and may, in the discretion of the commanding officer, be required to attend drills, or sent to work under charge of a sentinel, during the usual working hours. Military convicts will not be confined with other prisoners except in cases of necessity."[3]

3. "Prisoners will not be placed in irons except pursuant to sentence of a court-martial, or in the extraordinary case of a prisoner who, in the judgment of the commanding officer, is a desperate or dangerous character, in which case report of action and the circumstances will be immediately made to the department commander. A prisoner may be shackled or handcuffed

[1] Par. 993, A. R. For form for general order, see page 186, *post*.
[2] Par. 936, A. R.
[3] *Id.*, 940. For special rules relating to prisoners, see G. O. 55, A. G. O., 1897.

while being transported from one post to another, or from a post to a penitentiary when, in the judgment of the officer in charge, the escape of the prisoner can not otherwise be prevented."[1]

4. "Prisoners will be forwarded from places of trial to posts at which they are sentenced to serve confinement only on orders of department commanders or higher authority. The strength of guards to accompany them will be limited to the necessities of safe delivery. Orders detailing guards in charge of military prisoners will provide for the return journey of the guard and for commutation of rations, when such commutation is necessary. The commanding officer of a post from which a prisoner is transferred will send under seal, to the commanding officer of the post where the sentence of confinement is to be executed, the following papers in his case, viz: Discharge papers, if discharged, descriptive list, orders promulgating and modifying sentences, statement of conduct while under sentence to date of transfer, and a list of clothing in possession of the prisoner when forwarded."[2]

5. "All serviceable clothing which belongs to a prisoner, and his blankets, will accompany him to the post designated for his confinement, and will be fully itemized on the clothing list mentioned in the preceding paragraph. The guard in charge of the prisoner during transfer will be furnished with a duplicate of this list and will be held responsible for the delivery of all articles itemized therein, with the prisoner. At least one serviceable woolen blanket will be sent with every such prisoner so transferred."[3]

6. "The personal effects of military prisoners who have escaped from confinement, except such as possess some special value as keepsakes, may be disposed of by sale as in the case of effects of deceased soldiers, and the proceeds thereof, together with any money left by the prisoner in the hands of the company commander, be turned over to a paymaster, who should account for

[1] Par. 943, A. R. [2] Id., 946. [3]

the same in the manner provided for paymaster's collections. The officer will take the paymaster's receipt for the amount paid him and forward the same to the Auditor for the War Department."[1]

7. "Military convicts, other than those confined in penitentiaries, will be allowed in abatement of their terms of confinement when serving sentences of over three months and not over twelve months five days for each complete period of twenty-five days during the whole of which their conduct has been good; but the abatement of five days so authorized shall not have the effect in any case of reducing the confinement below three months. On sentences exceeding one year they will be allowed the foregoing abatement for the first year of the sentence including abatement, and thereafter ten days for each complete period of twenty days during the whole of which their conduct has been good. Abatements thus authorized may be forfeited, wholly or in part, by subsequent misconduct, such forfeiture to be determined by the commanding officer of the post where the prisoner is confined. A military convict serving sentence in a penitentiary will be allowed the abatement authorized for convicts in that penitentiary."[2]

8. "When the date for the commencement of a term of confinement imposed by sentence of a court-martial is not expressly fixed by the sentence, the term of confinement begins on the date of the order promulgating it. The sentence is continuous until the term expires, except when the person sentenced is absent without authority."[3] The word *days* in a sentence of confinement means periods of twenty-four hours, counting from guard-mounting on the first day of the sentence.

9. "When soldiers awaiting result of trial or undergoing sentence commit offenses for which they are tried, the second sentence will be executed upon the expiration of the first."[4]

10. Where a soldier, while undergoing sentence of confinement imposed without dishonorable discharge,

[1] Par. 948, A. R. [2] *Id.*, 950. [3] Id., 978. [4] Id., 982.

is tried for a further offense and sentenced to dishonorable discharge and confinement, the period of confinement under his prior sentence will terminate upon the date of his dishonorable discharge, leaving to be executed only the confinement imposed by the second sentence.

11. "No military convict will be released from confinement except on an order communicated by the commanding officer, who, before giving such order, will himself verify the date of expiration of the convict's sentence by examining all orders fixing or modifying his term of confinement."[1]

HABEAS CORPUS.

1. "Officers will make respectful returns, in writing, to all writs of *habeas corpus* served on them. When the writ is issued by a State court or judge, and the person held by the army officer is a civilian who has been apprehended under a warrant of attachment to be taken before a court-martial to testify as a witness, the officer will not produce the body, but will, by his return, set forth fully the authority by which he holds the person, and allege that the State authority is without jurisdiction to issue the writ of *habeas corpus*, and ask to have the same dismissed. He will also exhibit to the court or officer issuing the writ of *habeas corpus* the warrant of attachment and the subpœna (and the proof of the service of the subpœna) on which the warrant of attachment was based, and also a certified copy of the order convening the court-martial before which he had been commanded to take the person."[2]

2. "Should a writ of *habeas corpus* issued by a State court or judge be served upon an army officer, commanding him to produce an enlisted man or military convict, and show cause for his detention, the officer will decline to produce in court the body of the person named in the writ, but will make respectful return[3] in writing to the effect that the man is a duly enlisted sol-

[1] Par. 949, A. R. [2] *Id.*, 1007. [3] For form, see 189, *post*.

dier of the United States or a military convict under sentence of court-martial, as the case may be, and that the Supreme Court of the United States has decided that a magistrate or court of a State has no jurisdiction in such a case."[1]

3. No writ of *habeas corpus* shall be issued against a military officer or soldier who is detaining a prisoner in any unorganized province or territory of the Philippine Islands.[2]

4. It shall be a conclusive answer to a writ of *habeas corpus* against a military officer or soldier, and a sufficient excuse for not producing the prisoner in all organized provinces of the Philippine Islands, if the Commanding General or any general officer in command of the department or district shall certify that the prisoner is held by him either—

(1) As a prisoner of war;

(2) As a member of the Army, a civilian employee thereof, or a camp follower and subject to its discipline; but this paragraph shall not apply to pending[3] cases; or

(3) As a prisoner committed by a military court or commission prior to October 1, 1901; or

(4) As a prisoner arrested and held for trial before a military court or commission before October 15, 1901, for a violation of the laws of war committed before the same date; or

(5) As a prisoner guilty of violations of the laws of war committed in any unpacified province or territory and who has escaped into provinces officially declared to be under civil control and has been there captured by military authorities and is held for trial for such violations of the laws of war.[2]

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[1] Par. 1008, A. R.

[2] Acts of the Philippine Commission of October 1, 1901, and June 23, 1902. Respectful return in writing will be made in the case of prisoners who may be exempted from jurisdiction by the provisions of the acts above cited, stating the facts of the case, but the body of the prisoner will not be produced. In all other cases the return will be made and the body produced before the proper tribunal.

[3] October 1, 1901.

5. A writ of *habeas corpus* issued by a United States court or judge will be promptly obeyed. The person alleged to be illegally restrained of his liberty will be taken before the court from which the writ has issued, and a return[1] made setting forth the reasons for his restraint. The officer upon whom such a writ is served will at once report the fact of such service, by telegraph, direct to The Adjutant-General of the Army and the commanding general of the department.[2]

DISPOSITION OF RECORDS.

1. The Judge-Advocate-General revises and is the custodian of the records of the proceedings of all general courts-martial.[3] The original records of proceedings, with the decisions and orders of the reviewing authorities made thereon, and also the records of proceedings of all general courts which require confirmation by the President but which have not been appointed by him, will be forwarded direct to the Judge-Advocate-General. One copy of the order promulgating the action of the court, and a copy of every subsequent order affecting the case, will be forwarded to the Judge-Advocate-General, for file with the record of each case. When more than one case is embraced in a single order, a sufficient number of copies will be forwarded to enable one to be filed with each record. The proceedings of all courts appointed by the President will be sent direct to the Secretary of War.[4]

2. "Applications of officers, enlisted men, and military prisoners for copies of proceedings of general courts-martial, to be furnished them under the one hundred and fourteenth Article of War, will, when received by post or other commanders, be forwarded direct to the Judge-Advocate-General."[5]

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[1] For form, see page [illegible], *post*. For brief of authorities, when the writ is applied for on the ground of minority, see page [illegible], *post*.

[2] Par. 1060, A. R.

[3] Sec. 1199, R. S.; par. 923, A. R.

[4] Par. 925, A. R.

[5] *Id.*, 927.

3. "Communications relating to proceedings of military courts on file in the Judge-Advocate-General's Department will be addressed and forwarded direct by department commanders to the Judge-Advocate-General. In routine matters the Judge-Advocate-General and judge-advocates may correspond with each other direct."[1]

4. Judge-advocates of departments are the custodians of the reports of cases tried by summary courts[2] and of all proceedings of garrison or regimental courts-martial.[3]

5. Post commanders will, on the last day of each month, make a report to the department headquarters of the number of cases determined by summary court during the month, setting forth the offenses committed and the penalties awarded.[4] "The complete proceedings of a garrison or regimental court will be transmitted without delay by the post or regimental commander to department headquarters."[5]

6. The reports of cases tried by summary courts and the records of garrison and other inferior courts, except when convened at recruit depots and recruiting stations and other places exempted from the jurisdiction of commanders of territorial divisions and departments by paragraph 187, Army Regulations, will be filed in the office of the judge-advocate at the headquarters of the department commander in whose department the courts were held for two years, at the end of which time they may be destroyed.[6] Where such courts were convened at recruit depots and recruiting stations and other exempted places, the reports and records of such courts will be forwarded direct to The Adjutant-General of the Army.

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[1] Par. 928, A. R.

[2] Act of June 18, 1898, establishing the summary court; see page 128, *post.*

[3] Act of March 3, 1877.

[4] Act of June 18, 1898, sec. 4, page 128, *post.*

[5] Par. 991, A. R.

[6] Act of March 3, 1877.

INFERIOR COURTS-MARTIAL.

THE SUMMARY COURT.[1]

1. **Composition, etc.**—The summary court is composed of one officer, designated by the commanding officer of a garrison, fort, or other place, regiment or corps, detached battalion or company, or other detachment, for such place or command, or for each battalion of a command. When more than one officer is present with a command, the commanding officer should not designate himself as a summary court. But the summary court may be appointed and the officer designated by superior authority when by him deemed desirable.

2. When but one commissioned officer is present with a command, he is a summary court and finally determines the cases tried by him. In such case no order appointing the court will be issued, but the officer will enter on the record that he is the "only officer present with the command."[2] In all other cases the sentences must, before they can be executed, be approved by the officer appointing the court or the officer commanding for the time being.

3. The summary-court act does not give the accused the right to object to trial by summary court, except as stated in the next paragraph, nor does it require that when the trial officer is the accuser the case shall be tried by another court. A summary court can not, however, adjudge confinement and forfeiture in excess of a period of one month, unless the accused shall before trial consent in writing to trial by said court, but in

[1] Established by act of June 18, 1898, and recognized by the 83d A. W. See pages 127 and 130, *post*.

[2] Par. 966, A. R.

any case of refusal to so consent, the trial may be had either by general, regimental, or garrison court-martial, or by said summary court, but in case of trial by said summary court without consent as aforesaid, the court shall not adjudge confinement or forfeiture of pay for more than one month.[1]

4. Noncommissioned officers can not, if they object thereto, be brought to trial before summary courts without the authority of the officer competent to order their trial by general court-martial, but shall, in such cases, be brought to trial before garrison, regimental, or general courts-martial, as the case may be.[2]

5. **Jurisdiction.**—The summary court has jurisdiction both in time of peace and of war.

6. *As regards persons*, the summary court can not legally try officers, cadets, candidates for promotion, or the civilians mentioned in the 63d Article of War. As to noncommissioned officers, see paragraph 4, *ante*. Over all other enlisted men and over general prisoners the summary court has jurisdiction.

7. *As regards time of trial*, the jurisdiction of a summary court is not affected by the time when cases are brought before it, the requirement of the law as to time being directory only. The commanding officer, and not the court, will determine when and what cases will be brought before it. Delay in the trial of a soldier does not invalidate the proceedings, but may be considered by the court in awarding sentence.[3]

8. **Power.**—Summary courts have power to administer oaths;[4] to hear and determine cases; and, when

[1] 83d A. W., as amended by act approved March 2, 1901, page 130, *post*.

[2] Summary Court Act, page 128, *post*.

[3] Par. 968, A. R.

[4] This refers to oaths of witnesses. The trial officer himself is not sworn. The trial officers of summary courts, judge-advocates of courts-martial, and judge-advocates of departments have power to administer oaths for purposes of military justice and for other purposes of military administration. (See act of July 27, 1892.) A summary court is not empowered to issue process of attachment to compel the attendance of a civilian witness.

satisfied of the guilt of an accused party, to adjudge the punishment to be inflicted.[1]

9. **Procedure.**—The accused will be arraigned and allowed to plead, according to court-martial practice. When the accused pleads not guilty, witnesses will be sworn and evidence received, the accused being permitted to testify in his own behalf and make a statement, but the evidence and statement will not be recorded.

10. The summary court, as soon as trial is concluded, will record its findings and sentence[2] in the summary court record and submit it to the officer appointing the court, who will record thereon his approval or disapproval, in part or in whole, with date and signature. Should the only officer present with the command sit as summary court, the findings and sentence will be recorded in like manner.[3] No other records of the proceedings will be kept, and such trials will not be published in orders.

11. **Previous Convictions.**—Charges submitted for trial by a summary court will be accompanied by the certified copies of previous convictions on file with the company records, which copies will be returned to the company records immediately after trial. If this evidence is not submitted, the summary court may take judicial notice of any such evidence which that record contains. If the charges be referred to a garrison or regimental court-martial, the copies of previous convictions will accompany them, but will be returned to the company records immediately after trial.[4]

12. Whenever, in determining on its sentence, a summary court shall take into consideration previous

[1] Act of June 18, 1898; see page 127, *post;* and 83d A. W., as amended by act approved March 2, 1901, page 130, *post.*

[2] For forms for sentences, see page 168, *post.*

[3] See page 159, *post.*

[4] Par. 964, A. R., and "Instructions" on Summary Court Record, page 158, *post.*

convictions, a note of the number of such previous convictions will be made on the summary court record.

13. **Limit of Punishing Power.**—Summary courts are subject to the restrictions of the 83d Article of War.

Under this article inferior courts-martial "have power to award punishment not to exceed confinement at hard labor for three months or forfeiture of three months' pay, or both, and in addition thereto, in the case of noncommissioned officers, reduction to the ranks, and in the case of first-class privates reduction to second-class privates: *Provided*, That a summary court shall not adjudge confinement and forfeiture in excess of a period of one month unless the accused shall before trial consent in writing to trial by said court, but in any case of refusal to so consent the trial may be had either by general, regimental, or garrison court-martial, or by said summary court, but in case of trial by said summary court without consent as aforesaid, the court shall not adjudge confinement or forfeiture of pay for more than one month." This is the *limit of their punishing power*. For those offenses for which a limit of punishment has been prescribed, a summary court is restricted to the *kinds* of punishment named, except as to the substitutions in the settled ratio given on page 60, *ante*.

14. **Record.**—"There shall be a summary court record kept at each military post, and in the field at the headquarters of the proper command, in which shall be entered a record of all cases heard and determined and the action had thereon."[1]

15. **Clemency.**—The commanding officers authorized to approve the sentences of summary courts and superior authority have power to remit or mitigate the same.[2]

[1] Act of June 18, 1898; see page 128, *post*. For form for record, see page 157, *post*.

[2] *Id.*, sec. 3, page 128, *post*.

16. "When the only officer present with a command sits as a summary court, no approval of the sentence is required by law, but he should sign the sentence as such officer and date his signature."[1]

17. **Instructions for Post and Other Commanders, relating to Summary Courts.**—Charges for offenses cognizable by inferior courts will be laid before the proper commander, who, if he thinks the accused should be tried, will cause him to be brought before the summary court[2] or garrison or regimental court-martial. Before referring to summary courts charges for which the maximum limit of punishment that may be awarded is greater than one month's forfeiture and confinement, commanding officers will cause the accused to sign a statement on the original charges as to whether or not he consents to trial by summary court, which statement, along with the charges, becomes a part of the summary court record. A note of this statement in each case will also be entered on the monthly report of trials by such court.[3]

18. "Commanding officers are not required to bring every dereliction of duty before a court for trial, but will endeavor to prevent their recurrence by admonitions, withholding of privileges, and taking such steps as may be necessary to enforce their orders."[4] In accordance with the spirit of the foregoing, company commanders are authorized, subject to the control of the commanding officer of the post, to dispose of cases of derelictions of duty in their commands which would be within the jurisdiction of inferior courts-martial by requiring extra tours of fatigue, unless the soldier concerned demands a trial. This right to demand a trial must be made known to him.[5]

19. "The summary court will be opened at a stated hour every day except Sunday,[6] for the trial of such

[1] Par. 966, A. R.
[2] *Id.*, 965.
[3] *Id.*, 963. See forms, pages 157 and 159, *post*.
[4] *Id.*, 961.
[5] Cir. No. 5, A. G. O., March 14, 1898.
[6] If it be understood that the court shall not sit on Sunday, the officer *charged with the duty of* bringing offenders ' mply with his *duty by doing so at the first* session of the '

cases as may properly be brought before it. Trials will be had on Sunday only when the exigencies of the service make it necessary."[1]

20. Commanding officers will furnish company and other commanders with copies of the summary court record relating to men of their commands, said copies to be certified to be true copies by the commanding officer or adjutant.[2]

21. The name of each officer at a post who has acted as a summary court will be reported on the post return, with dates.

THE GARRISON COURT-MARTIAL.

1. **Composition.**—A garrison court-martial is composed of three members[3] and a judge-advocate. The remarks regarding the eligibility of officers for court-martial duty, on page 11, paragraphs 1–3, *ante*, apply to garrison courts.

2. **Constitution.**—Every officer commanding a garrison, fort, or other place where the troops consist of different corps may appoint garrison courts.[4] The term "other place" includes any locality whatever where the command may be, whether in garrison or in the field. To fulfill the requirement regarding "different corps," it is sufficient if there be on duty in the command a *single* officer or soldier of another arm of service than that of which the main body is composed.

3. **Jurisdiction, etc.**—The summary court act has expressly abolished the field officer's court, and has practically substituted the summary court for the garrison and regimental courts-martial, both in time of peace and war, subject to the provisions that noncommissioned officers shall not, if they object thereto, be brought to trial before summary courts without the authority of the officer competent to order their trial by general court-martial, but shall in such cases be

[1] Par. 968, A. R. [2] *Id.*, 965. [3] 82d A. W. [4] *Id.*

brought to trial before garrison, regimental, or general courts-martial, as the case may be;[1] and the 83d Article of War provides that a summary court shall not adjudge confinement and forfeiture in excess of a period of one month unless the accused shall before trial consent in writing to trial by said court, but in any case of refusal to so consent the trial may be had either by general, regimental, or garrison court-martial.

4. The garrison court-martial can not try capital cases, nor commissioned officers, cadets, or candidates for promotion; but it has jurisdiction over all other enlisted men, general prisoners, and, in time of war, over the persons described in the 63d Article of War.

5. A garrison court-martial may be convened under the following circumstances:

(*a*) Where the accused, not being an enlisted man or a general prisoner, is not subject to the jurisdiction of a summary court, although he is subject to the jurisdiction of other inferior courts-martial.

(*b*) In case the accused, before trial, refuses to consent in writing to trial by summary court, the case being one which a summary court can not, under these circumstances, adequately punish.

(*c*) When the accused, being a noncommissioned officer, objects to trial by summary court.

6. Whenever under the summary court act or the 83d Article of War it becomes necessary to convene a garrison or regimental court, the order appointing it will state the facts which bring the cases to be tried within the exceptions of those laws.[2]

7. The general remarks heretofore made regarding the president, members, judge-advocate, organization, order of procedure,[3] etc., of courts-martial apply to garrison courts, except when the general court is specifically mentioned.

[1] Act of June 18, 1898; see page 128, *post*.

[2] Par. 969, A. R. For form for order and record, see page 160, *post*.

[3] Testimony taken before a garrison or regimental court-martial will not be reduced to writing. (Par. 988, A. R.)

THE REGIMENTAL COURT-MARTIAL.[1]

1. **Composition.**—The regimental, like the garrison court-martial, is composed of three members and a judge-advocate; but in case of the regimental court only officers of the offender's regiment or corps are eligible for detail on the court.[2]

2. **Constitution.**—Every officer commanding a regiment or corps may appoint a regimental court-martial.[3] The word "corps" includes the Corps of Engineers, the Ordnance, and the Signal Corps.

3. **Jurisdiction.**—With the exception that the regimental court-martial has jurisdiction only over offenders belonging to the regiment or corps from which the court is composed, and over civilians attached thereto, as contemplated in the 63d Article of War, what has been said of the jurisdiction, punishing power, and procedure of garrison courts applies equally to regimental courts.[3]

The regimental court-martial also has the jurisdiction conferred upon it by the 30th Article of War.[1]

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[1] See page 106, *post*, note.

[2] 81st A. W.

[3] Regarding order for regimental court, see par. 969, A. R.; and for form for record, see page 163, *post*.

COURTS OF INQUIRY.

1. **Constitution.**—A court of inquiry may be ordered, that is, convened, by the President or by any commanding officer, but shall never be ordered by a commanding officer except upon a demand by the officer or soldier whose conduct is to be inquired of.[1]

2. There is no statutory restriction to the meaning of the term "commanding officer," consequently any commander of the officer or soldier who makes the request would have authority to convene the court, but if the charge to be inquired into is beyond the jurisdiction of a court-martial which such commander can convene, he would not, by analogies of the service in the administration of military justice, be the proper convening authority in such case. It is the offense charged which should give the jurisdiction to convene and not the status of the party in service.[2]

3. **Jurisdiction.**—A court of inquiry is convened to examine into the nature of any transaction of, or accusation or imputation against, any officer or soldier,[3] and the inquiry is confined to those actually in the service.[4] It will not give an opinion on the merits of the case inquired of unless specially ordered to do so.[5] The opinion may not be unanimous and a dissenting opinion is therefore authorized. The court is not barred by any statute of limitation in its investigation.[6]

[1] 115th A. W.
[2] Opin. J. A. G., approved by Secretary of War, September 19, 1874.
[3] 115th A. W.
[4] *Digest Opin. J. A. G.*, § 866.
[5] *119th A. W.*
[6] *Digest Opin. J. A. G.*, § 318.

4. **Composition.**—"A court of inquiry shall consist of one or more officers, not exceeding three, and a recorder, to reduce the proceedings and evidence to writing."[1]

5. The form of the convening order is similar to that for a court-martial. It details the members and recorder by name, and specifies the subject-matter of inquiry, and directs a report of the facts only, or of the facts with an opinion.

6. Where the court is composed of two or more members and the number is reduced by casualty or challenge, the court may proceed with the reduced number, but the convening authority should be notified, as a new member may be detailed and take his seat during the inquiry.

7. **Organization.**—It is the custom of the service to allow the same right of challenge of members as in courts-martial.

8. The oath of the members of the court is administered by the recorder and that of the recorder by the president of the court. The oaths are those prescribed by the 117th Article of War.

9. A reporter for a court of inquiry is allowed to be paid under current appropriation acts for the support of the army. The employment and rate of compensation is in the discretion of the Secretary of War only. Reporters are usually paid at the rates fixed by army regulations for those of general courts-martial.

10. **Procedure.**—A court of inquiry is governed by the general principles of military law, applying the analogies of a court-martial where they are applicable, and recurring to adjudged cases, precedents, rules, authoritative legal opinions and approved books of legal exposition, where there is no pertinent paramount stated rule.[2]

11. "A court of inquiry, and the recorder thereof, have the same power to summon and examine witnesses as is given to courts-martial and the judge-advocates thereof. Such witnesses shall take the same oath which is taken

[1] 116th A. W. [2] 8 Opin. Atty. Gen., 346.

by witnesses before courts-martial, and the party accused shall be permitted to examine and cross-examine them, so as fully to investigate the circumstances in question."[1]

12. The examination of witnesses may be by the court, by a member thereof, or by the recorder, in the discretion of the court. The recorder is not an adviser of the court, nor a prosecutor before it, but must assist the court, if it so desires, in all matters leading to correct conclusions of fact and law.

13. The court must give its conclusions as to the facts as a finding, and, when ordered, give an opinion on the merits of the case.

14. "The proceedings of a court of inquiry must be authenticated by the signatures of the recorder and the president thereof, and delivered to the commanding officer."[2] The form for the record of a general court-martial should be followed in making up the record of the court.

[1] 118th A. W. [2] 120th *id.*

RETIRING BOARDS.

1. **Constitution and Composition.**—"The Secretary of War, under the direction of the President, shall, from time to time, assemble an Army retiring board,[1] consisting of not more than nine nor less than five officers, two-fifths of whom shall be selected from the Medical Corps. The board, excepting the officers selected from the Medical Corps, shall be composed, as far as may be, of seniors in rank to the officer whose disability is inquired of."[2]

2. The provision of the statute as to the rank of the members is directory only, and the decision of the convening authority, as evidenced by the selection of the members of the board, is conclusive.

3. Retiring boards are convened by the Secretary of War, who, in the absence of any statutory authority, under the custom of the service, appoints a recorder. The recorder is not charged with any specific function other than to record the proceedings of the board. He will, however, carry out such instructions as may be given him by the board and may be required by the latter to collect evidence, present it to the board, examine the witnesses and, generally speaking, conduct the case for the Government.

A stenographic reporter for a retiring board can only be employed on the authority of the Secretary of War obtained in advance of the employment. The authority must be filed with the voucher on which payment is made. The form of voucher used will be that provided

[1] For procedure as to retirement on examination for promotion see page 95, and for form for record of retiring board see page 164, post.

[2] Sec. 1246, R. S.

for the payment of reporters for general courts-martial with the necessary changes in the wording of the form.[1]

4. **Right to a Hearing.**—"Except in cases where an officer may be retired by the President upon his own application, or by reason of his having served forty-five years, or of his being sixty-two years old, no officer shall be retired from active service, nor shall an officer, in any case, be wholly retired from the service, without a full and fair hearing before an Army retiring board, if, upon due summons, he demands it."[2]

5. This entitles an officer subject to be thus retired, to appear before the board, with counsel if desired, and to introduce testimony of his own, and to cross-examine the witnesses examined by the board, including the medical members of the board who may have taken part in the medical examination and have stated or reported to the board the result of the same. If the officer does not elect to appear before the board when summoned, he waives the right to a hearing, and can not properly take exception to a conclusion arrived at in his absence.[3]

6. Section 1253, Revised Statutes, does not authorize the President to send a case back to a retiring board after he has once approved and acted upon its report; such approval and action determines that the officer has had "a full and fair hearing."[4]

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[1] For form of voucher see page 184, *post*.

[2] Sec. 1253, R. S.; sec. 17, act August 13, 1861.

[3] Digest Opin. J. A. G., § 2197.

[4] Miller's Case, 19 Ct. Cls., 338; McBlair's case, *id.*, 528. In both of these cases the officers had been wholly retired, and their successors had been appointed and confirmed.

Attorney General Devens held where a naval officer having appeared before an examining board (organized under secs. 1493–1505, R. S.), and, the examination being temporarily suspended, was granted permission to go home and to be absent until notified by the board to appear, and he failed to receive this notice until after the examination, which was resumed during his absence, had been concluded, and the proceedings and findings of the board were approved by the President and his order in the case duly executed by the retirement of the officer (under sec. 1447, R. S.), but the vacancy created by such retirement remain[illegible] and no rights of any other person had intervened, that the [illegible]ident could be revoked and the officer allowed a hearing.

7. **Challenge.**—The statutory right to a "fair hearing" includes the right to a hearing by an impartial board, and therefore the right to challenge for cause.

8. **Oaths.**—The members of a retiring board "shall be sworn in every case to discharge their duties honestly and impartially."[1] The oath is administered by the recorder.

The following form of oath complies with the statute:

"You [naming the members] do swear that you will honestly and impartially discharge your duties as members of this board in the matter now before you. So help you God."

9. The presiding officer of the board administers the following oath to the recorder:

"You [naming him] do swear that you will, according to your best ability, accurately and impartially record the proceedings of the board and the evidence to be given in the case in hearing. So help you God."

10. **Powers.**—A retiring board may inquire into and determine the facts touching the nature and occasion of the disability of any officer who appears to be incapable of performing the duties of his office, and shall have such powers of a court-martial and of a court of inquiry as may be necessary for that purpose. "In the execution of the duty thus imposed by law, the board is required to ascertain the nature and extent of the disability and its character and effect, as temporary or permanent. The evidence upon which to base its findings in this regard should be derived chiefly but not exclusively from the report of the medical officers and from the authenticated extracts from the departmental records which show the cases in which the officer has received medical or surgical treatment during his connection with the military service."[2]

11. The investigation of a retiring board is not restricted by any statute of limitation. It may inquire

[1] *Sec. 1247, R. S.* [2] Cir., W. D., Feb. 27, 1904.

into the matter of a disability, however long since it may have originated.[1]

12. "The provision (of section 1248, Revised Statutes) that the board 'shall have such powers of a court-martial and of a court of inquiry as may be necessary,' etc., is indefinite, but has given rise to but little question in practice. Construing it in connection with the other provisions cited, its evident intention is seen to be that the board shall have and exercise such powers of a 'court' as may be requisite to insure a full investigation, to afford a fair hearing, and to enable it satisfactorily to determine the questions referred. Thus it is properly authorized and empowered to call for and entertain such testimony of witnesses, depositions, documents, or papers, as may be material to establish or illustrate the nature or extent of the disability, to pass upon questions of admissibility of evidence, to grant continuances, to give the officer ordered before it a reasonable opportunity of defense if desired, to find and report in his absence if he fail to appear; and further to determine the relevancy and validity of challenges to its members and punish acts in the nature of contempt, according to Arts. 86 and 88 (A. W.), if necessary to an impartial and complete inquiry. But the board can not entertain a charge of a military offense as such, nor assume to *try*. The disability which it is to inquire into is an existing physical or mental incapacity, not a moral defect or a criminal amenability. If the case be one calling for trial and punishment, it should be referred to a court-martial."[2]

13. "The board having established the fact of incapacity for active service must seek the cause of such incapacity and determine whether the cause so ascertained is an *incident of service;* that is, a thing which inseparably belongs to, is connected with, or inheres in the military service. Battles, marches, the performance of the several duties in garrison or in the field which

[1] *Digest Opin. J. A. G.*, § 2193.

[2] *Winthrop's Military Law and Precedents*, pa[illegible] Opin. J. A. G., § 2192.

are imposed upon officers of the line or staff by law, regulations, the lawful orders of competent military superiors, by an established custom, or by the exigencies or necessities of the military service; all these make up and constitute the 'incidents of service,' one or more of which must be ascertained by the board as the determining cause of an incapacitating disability. If the disabling cause be a wound or injury, the wound or injury must have resulted from an incident of the service: if it be a disease, the disease must have been the result of an incident or a succession or aggregation of incidents of the service; in other words, the board must pass from the disability to the occasion or circumstance of which it is the direct result, and that occasion or circumstance must be a thing so inseparably associated with the military service, so directly connected with it and growing out of it as to entitle it to be regarded as an incident of the service.

"If an officer participates in military operations, or serves in a locality where the climatic or other causes are such as to induce a particular form of disease, and having taken due and reasonable precautions to prevent it contracts such disease, then if disability results its cause would properly be regarded as an incident of service within the meaning of the statute. But when a disease is contracted, not due to exposure or to the existence of conditions such as have been described, the board will require the production of testimony showing that it is not due to vicious or irregular habits, and that there has been neither carelessness nor contributory negligence on the part of the officer, who is bound as a prudent man and a conscientious public officer to use every proper means at his command to preserve his health and to maintain his physical efficiency under all conditions of service."[1]

14. When the retirement is desired by the officer before the board, it is proper, at the beginning of the hearing, *for him to state* under oath the nature and cause of

[1] Cir., W. D., Feb. 27 1901.

his disability, the recorder or board asking such questions as will help to bring out the facts. He may also be interrogated as to his military history, if it be deemed desirable to do so. When the retirement is opposed by him, he can not be required to testify against himself.

15. The senior medical officer of the board is the next witness. He is called on to submit the result (*reduced to writing and signed by the medical officers*) of the medical examination of the officer before the board, and is interrogated as to the cause and permanency of the disability and the degree of incapacity for active service. The other medical officer or officers (if there be more than two) are similarly examined. Whether the disability is an incident of service,[1] is a question for the board to determine on the facts.

16. The recorder then submits the documentary evidence which he has received from The Adjutant General's Office. It is not the practice of retiring boards to verify the correctness of these records under oath. Other evidence may then be introduced. The officer before the board has the right, as above stated, to object to improper evidence and to interrogate the witnesses, and may himself introduce evidence, if legal, material, and relevant, and may submit a statement in writing, if he desires to do so.

17. **Finding.**—"When the board finds an officer incapacitated for active service, it shall also find and report the cause[2] which, in its judgment, has produced his

[1] As to what "incident to the service" means, see also page 95, *post*, note 3.

[2] It has been held that the "cause" of "incapacity" intended in section 1249, Revised Statutes, is a physical cause; that moral obliquity was not had in view; and that the matter of the financial integrity of the officer was beyond the jurisdiction of the board. So, held that the board was not authorized to recommend the retirement of an officer because he did not pay his debts. Held also that the inability of a disbursing officer to furnish a bond when duly required to do so was not sufficient ground for his retirement. (Digest Opin. J. A. G., § 2203.)

Held that the law—sections 1248 and 1249, Revised Statutes—contemplated *an existing and not a purely* prospective and contingent incapacity; and *that an inquiry into an* officer's general efficiency could be pertinent only *in so far as it could be* regarded as going to show that his inefficiency, if *found was the result of an* impairment of health. (Id., § 2204.)

incapacity, and whether such cause is an incident of service."[1]

18. The board is closed for deliberation and determines whether the officer before it for examination is incapacitated for active service or not. (It is not necessary that the recorder retire.) When it finds the officer incapacitated for active service, it must also find and report the cause which, in its judgment, has produced the incapacity, and whether such cause is an incident of service.[1] The board may modify its findings and decision at any time before forwarding its record of proceedings. The finding should be framed in narrative form, and should not embrace any recommendation.

19. **Action on Finding.**—"The proceedings and decision of the board shall be transmitted to the Secretary of War, and shall be laid by him before the President for his approval or disapproval and orders in the case."[2]

20. In any case in which, in the President's judgment, the investigation has not been complete, "or the finding is not justified by the facts, he may, before acting thereon, return the proceedings to the board for a further inquiry or hearing, or a correction of its conclusions, as in a case of a court-martial. But not being a court, and the inquiry not being a *trial*, the board, upon such revision, may, and should if so directed; reexamine former witnesses or take new testimony.

21. "It is now fully settled that where the President has finally approved the finding of a retiring board, and has acted thereupon by making his order retiring the officer in one of the forms authorized by the statute, his power is exhausted. He can not then reopen the case, nor, though the order made was mistaken or unjust, can he revoke it and substitute another otherwise retiring the officer. If he does so, the second order will be void and inoperative. The action of the President, whose authority in such a case is, in the language of the Supreme Court, 'wholly dependent upon the letter of

[1] Sec. 1249, R. S. [2] Sec. 1250, R. S.

positive enactment,' is 'equivalent to the judgment of an appropriate tribunal upon the facts as found, and can not be disturbed.' If injustice has been done, relief can be afforded by Congress alone."[1]

22. "The finding of a retiring board, approved by the President, is conclusive as to the facts. The board finds the facts and the President approves or disapproves the finding, but the law does not empower him to modify the finding or to substitute a different one. There is here a judicial power vested in the two, and not in the President acting singly, and when the power has been once fully exercised it is exhausted as to the case."[2]

RETIREMENT.

1. "When any officer has become incapable of performing the duties of his office, he shall be either retired from active service, or wholly retired from the service, by the President, as hereinafter provided."[3]

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[1] Winthrop's Military Law and Precedents, page 767; United States v. Burchard, 125 U. S., 179, 180; Burchard v. United States, 19 Ct. Cls., 137; Potts v. United States, 125 U. S., 175; Miller v. United States, 19 Ct. Cls., 338; McBlair v. United States, *id.*, 528; 19 Opin. Atty. Gen., 203. "The finding of the retiring board, approved by the President, is the judgment of the tribunal created under the law to determine such questions." (Potts v. United States, *supra.*)

"The finding, approved by the President, fixes the fact that an officer's incapacity was or was not caused by the service, and the fact once fixed can not be reviewed." (Burchard v. United States, *supra.*)

"Upon the report of the board, the President had the right to adopt one of three courses with the claimant; he could disapprove the finding, and thereby retain the claimant in the active service; retire him from active service, or *wholly* retire him from the Army, as he might determine. He had a power to exercise in the disposition of the report, and his action thereon made, in law, the complete exercise of the full measure of authority provided by the statute. It is not a *continuing* power, but is performed to the extent of its existence by the *one* act of the President." (McBlair v. United States, *supra.* And compare *Ex parte* Randolph, 2 Brock., 473; People v. Waynesville, 88 Ill., 470, cited in 19 Opin. Atty. Gen., 209.)

[2] Digest Opin. J. A. G., § 2206. See U. S. v. Burchard, 125 U. S., 179.

[3] Sec. 1245, R. S. (see secs. 1246 to 1258, R. S., inclusive). This section is taken from sec. 16 of "an act providing for the better organization of the Military Establishment," approved August 3, 1861, which prescribed, "that *if any commissioned officer* of the Army, or of the Marine Corps, shall have *become, or shall hereafter become*, incapable of performing the duties of *his office, he shall be placed upon the retired list* and withdrawn from active *service and command and from the line of promotion.*"

2. "When a retiring board finds that an officer is incapacitated for active service, and that his incapacity is the result of an incident of service, and such decision is approved by the President, said officer shall be retired from active service and placed on the list of retired officers." [1]

3. "When the board finds that an officer is incapacitated for active service, and that his incapacity is not the result of any incident of service, and its decision is approved by the President, the officer shall be retired from active service, or wholly retired from the service, as the President may determine." [2]

RETIREMENT UNDER ACT OF OCTOBER 1, 1890.

1. The act of October 1, 1890, providing for examination for promotion in the Army directs: "That should the officer fail in his physical examination and be found incapacitated for service by reason of physical disability contracted in line [3] of duty, he shall be retired with the

[1] Sec. 1251, R. S. It does not affect the authority to retire under sec. 1251, R. S., that the incapacity of the officer may have been found to have resulted from a wound received by him while in the volunteer service before entering the Regular Army.

[2] Sec. 1252, R. S. Under sec. 1252, R. S., an officer may, in the discretion of the President, legally be retired by reason of an incapacity resulting from habitual drunkenness.

Secs. 1251 and 1252, R. S., are based on sec. 17 of the act cited in note 3, page 94, *ante*, which prescribed as follows: "The board, whenever it finds an officer incapacitated for active service, will report whether, in its judgment, the said incapacity result from long and faithful service, from wounds or injury received in the line of duty, from sickness or exposure therein, or from any other incident of service. If so, and the President approve such judgment, the disabled officer shall thereupon be placed upon the list of retired officers, according to the provisions of this act. If otherwise, and if the President concur in opinion with the board, the officer shall be retired as above, either with his pay proper alone, or with his service rations alone, at the discretion of the President, or he shall be wholly retired from the service, with one year's pay and allowances."

The incapacity mentioned is a physical incapacity. (Digest Opin. J. A. G., §§ 2203, 2208)

[3] The phrase "in line of duty," as used in this act, should be construed as having the same meaning with "incident of service," as used in sec. 1249, R. S.

The following is an extract from a report of the Judge-Advocate General *which, although relating* to enlisted men, is in principle applicable in the

rank to which his seniority entitled him to be promoted; but if he should fail for any other reason he shall be suspended from promotion for one year, when he shall

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case of commissioned officers. The action of the War Department on this report was in effect a confirmation of the conclusion arrived at:

"Formerly the expression 'line of duty' was much more strictly construed than now. Attorney General Cushing explained it thus:

"'The phrase "line of duty" is an apt one, to denote that an act of duty performed must have relation of causation, mediate or immediate, to the wound, the casualty, the injury, or the disease, producing disability or death.

* * * * *

"'Every person who enters the military service of the country—officer, soldier, sailor, or marine—takes upon himself certain moral and legal engagements of duty, which constitute his official or professional obligations. While in the performance of those things, which the law requires of him as military duty, he is in the line of his duty. But, at the same time, though a soldier or sailor, he is not the less a man and a citizen, with private rights to exercise and duties to perform; and, while attending to these things, he is not in the line of his public duty. In addition to this, a soldier or sailor, like any other man, has the physical faculty of doing many things, which are in violation of duties, either general or special; and in doing these things he is not acting in the line of his duty. Around all those acts of the soldier or sailor which are official in their nature, the pension law draws a legislative line, and then they say to the soldier or sailor: If, while performing acts which are within that line, you thereby incur disability or death, you, or your widow or children, as the case may be, shall receive a pension or other allowance; but not if the disability or death arise from acts performed outside of that line, that is, absolutely disconnected from, and wholly independent of, the performance of duty. Was the cause of disability or death a cause within the line of duty or outside of it? Was that cause appertaining to, dependent upon, or otherwise necessarily and essentially connected with, duty within the line, or was it unappurtenant, independent, and not of necessary and essential connection? That, in my judgment, is the true test-criterion of the class of pension cases under consideration.' (7 Opin. Atty. Gen., 161, 162.)

"A more liberal construction was the earlier one of Attorney General Rush. Upon this point he said:—

"'I should presume, however, that every officer in full commission, and not on furlough, must be considered in the line of his duty, although, at the moment, no particular or active employment is devolved upon him. The same of a soldier who is kept in pay, for it is presupposed of both the one and the other that they are at all times prepared for duty; and it is surely of indispensable obligation upon them to keep themselves detached from other pursuits, so as to be ready at a moment to answer any call emanating from those who may be authorized to command them.' (1 Opin. Atty. Gen., 182.)

"But neither of these views has been found to be sufficient, and therefore neither has been followed in practice.

"*By [the* fourth section of) an act of March 3, 1865 (13 Stat., 488), it was *provided:—*

"'*That every noncommissioned* officer, private, or other person, who *has been, or shall hereafter* be, discharged from the army of the United

be reexamined, and in case of failure on such reexamination he shall be honorably discharged, with one year's pay, from the Army."

2. All questions relating to the physical condition of an officer shall be determined by the full board.

The physical examination will be thorough, and will include the ordinary analysis of the urine.

States by reason of wounds received in battle, on skirmish, on picket, or in action, or in the line of duty, shall be entitled to receive the same bounty as if he had served out his full term.'

"And by an act approved April 12, 1866 (14 Stat., 352), it was declared—

"'That the true intent and meaning of the words "or in the line of duty," used in the fourth section of the act approved March 3, 1865, * * * requires that the benefit of the provision of said section shall be extended to any enlisted man or other person entitled by law to bounty who has been or may be discharged by reason of a wound received while actually in service under military orders, not at the time on furlough or leave of absence, nor engaged in any unlawful or unauthorized act or pursuit.'

"In this enactment we have a legislative construction of the expression 'in the line of duty,' as used in the earlier legislation cited. To be in the line of duty, in the sense of that legislation, the soldier must be actually in service under military orders, and he must not be on furlough nor engaged in any unlawful or unauthorized act or pursuit. For the purpose of that legislation this legislative construction would be conclusive, but it is not necessarily so in determining the soldier's condition in other connections—his right of admission to the Soldiers' Home, for example. In determining his general military status or condition in respect to the question under consideration a further limitation has in practice been recognized, namely, that the disability must not be the result of the unlawful or unauthorized act, as a direct or a contributory cause. A circular of the Surgeon General's Office, dated May 11, 1893, approved by the Secretary of War, states the matter as follows:

"'It is just to assume that all diseases contracted or injuries received while an officer or soldier is in the military service of the United States occur in the line of duty unless the surgeon knows, first, that the disease or injury existed before entering the service; second, that it was contracted while absent from duty on furlough or otherwise; or, third, that it occurred in consequence of willful neglect or immoral conduct of the sick man himself.'

"I am inclined to believe that the principle as stated in the act of April 12, 1866, modified by the limitation indicated, is as accurate a general statement of the meaning in military administration of the expression 'in the line of duty' as can be given. It is, however, subject to exceptions. Thus a soldier may be on furlough and yet in the line of duty, as when he is en route to his station at the expiration of his furlough, or when during his furlough he is, in compliance with orders, on his way to a place to report his whereabouts. So, certain acts may in a measure be contributory causes of disability, and yet not to such a degree as to bring the case within the general rule, as when the disability is the result of negligence, *but the negligence* is not of such a degree as to amount to culpable contributory negligence. Such cases can only be properly decided on their own merits."

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Defects of vision, resulting from errors of refraction, that are not excessive, and that may be entirely corrected by glasses, do not disqualify, unless they are due to or are accompanied by organic disease.

3. When the board finds an officer physically incapacitated for service, it shall conclude the examination by finding and reporting the cause which, in its judgment, has produced his disability, and whether such disability was contracted in the line of duty.

4. The record in each case where an officer is found physically disqualified shall be authenticated by all the members, including medical officers, and the recorder. In all other cases the medical officer will not be required to sign the proceedings. If any member dissents from the opinion of the board, it will be so stated.

5. Any officer reported by a retiring board as incapacitated by reason of physical disability, the result of an incident of service, shall, if the proceedings of said board are approved by the President, be regarded as physically unfit for promotion within the meaning of section 3 of the act of October 1, 1890, and will be retired with the rank to which his seniority entitles him whenever a vacancy occurs that otherwise would result in his promotion on the active list; provided, that before the occurrence of such vacancy he shall not have been placed on the retired list.[1]

6. The finding of the board of examination that the officer is incapacitated for duty is not *per se* final, but must be reported for the action of the Secretary of War and passed upon by him. Where the finding and report of the board have been approved but not yet executed by actual retirement, there may intervene contingencies which would supersede such proceeding—as the trial and dismissal of the officer by court-martial, or the arising of new causes which might make proper that the question of his disability be inquired into by a retiring

[1] *G. O. 41*, A. G. O., 1897, which also contains detailed instructions as to *procedure of board of examinations* in general.

board convened under section 1246, Revised Statutes. But unless some such new occasion and ground of disqualification be presented, the action of the Secretary of War, in approving the report, remains final and exhaustive, and the officer is entitled to be retired under the act of 1890, and can not legally be ordered before such retiring board.[1]

[1] Digest Opin. J. A. G., § 2207.

ARTICLES OF WAR.

SECTION 1342, R. S. The armies of the United States shall be governed by the following rules and articles. The word officer, as used therein, shall be understood to designate commissioned officers, the word soldier shall be understood to include noncommissioned officers, musicians, artificers, and privates, and other enlisted men, and the convictions mentioned therein shall be understood to be convictions by court-martial.

ARTICLE 1. Every officer now in the Army of the United States shall, within six months from the passing of this act, and every officer hereafter appointed shall, before he enters upon the duties of his office, subscribe these rules and articles.

ART. 2. These rules and articles shall be read to every enlisted man at the time of, or within six days after, his enlistment, and he shall thereupon take an oath or affirmation, in the following form: "I, A. B., do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America: that I will serve them honestly and faithfully against all their enemies whomsoever; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to the rules and articles of war." This oath may be taken before any commissioned officer of the Army.

ART. 3. Every officer who knowingly enlists or musters into the military service any minor over the age of 16 years without the written consent of his parents or guardians, or any minor under the age of 16 years, or *any insane or* intoxicated persons, or any deserter from *the military or naval* service of the United States, or *any person who has* been convicted of any infamous

criminal offense, shall, upon conviction, be dismissed from the service, or suffer such other punishment as a court-martial may direct.

ART. 4. No enlisted man, duly sworn, shall be discharged from the service without a discharge in writing, signed by a field officer of the regiment to which he belongs, or by the commanding officer, when no field officer is present; and no discharge shall be given to any enlisted man before his term of service has expired, except by order of the President, the Secretary of War, the commanding officer of a department, or by sentence of a general court-martial.

ART. 5. Any officer who knowingly musters as a soldier a person who is not a soldier shall be deemed guilty of knowingly making a false muster, and punished accordingly.

ART. 6. Any officer who takes money, or other thing, by way of gratification, on mustering any regiment, troop, battery, or company, or on signing muster rolls, shall be dismissed from the service, and shall thereby be disabled to hold any office or employment in the service of the United States.

ART. 7. Every officer commanding a regiment, an independent troop, battery, or company, or a garrison, shall, in the beginning of every month, transmit through the proper channels, to the Department of War, an exact return of the same, specifying the names of the officers then absent from their posts, with the reasons for and the time of their absence. And any officer who, through neglect or design, omits to send such returns, shall, on conviction thereof, be punished as a court-martial may direct.

ART. 8. Every officer who knowingly makes a false return to the Department of War, or to any of his superior officers, authorized to call for such returns, of the state of the regiment, troop, or company, or garrison under his command; or of the arms, ammunition

clothing, or other stores thereunto belonging, shall, on conviction thereof before a court-martial, be cashiered.[1]

ART. 9. All public stores taken from the enemy shall be secured for the service of the United States; and for neglect thereof the commanding officer shall be answerable.

ART. 10. Every officer commanding a troop, battery, or company, is charged with the arms, accouterments, ammunition, clothing, or other military stores belonging to his command, and is accountable to his colonel in case of their being lost, spoiled, or damaged otherwise than by unavoidable accident, or on actual service.

ART. 11. Every officer commanding a regiment or an independent troop, battery, or company, not in the field, may, when actually quartered with such command, grant furloughs to the enlisted men, in such numbers and for such time as he shall deem consistent with the good of the service. Every officer commanding a regiment, or an independent troop, battery, or company, in the field, may grant furloughs not exceeding thirty days at one time, to five per cent of the enlisted men, for good conduct in the line of duty, but subject to the approval of the commander of the forces of which said enlisted men form a part. Every company officer of a regiment, commanding any troop, battery, or company not in the field, or commanding in any garrison, fort, post, or barrack, may, in the absence of his field officer, grant furloughs to the enlisted men, for a time not exceeding twenty days in six months, and not to more than two persons to be absent at the same time.

ART. 12. At every muster of a regiment, troop, battery, or company, the commanding officer thereof shall give to the mustering officer certificates, signed by himself, stating how long absent officers have been absent *and the reasons* of their absence. And the commanding *officer of every troop*, battery, or company shall give

[1] "*Cashiered*" *and* "dismissed from the service" are now considered *practically synonymous.*

like certificates, stating how long absent noncommissioned officers and private soldiers have been absent and the reasons of their absence. Such reasons and time of absence shall be inserted in the muster rolls opposite the names of the respective absent officers and soldiers, and the certificates, together with the muster rolls, shall be transmitted by the mustering officer to the Department of War as speedily as the distance of the place and muster will admit.

ART. 13. Every officer who signs a false certificate, relating to the absence or pay of an officer or soldier, shall be dismissed from the service.

ART. 14. Any officer who knowingly makes a false muster of man or horse, or who signs, or directs, or allows the signing of any muster roll, knowing the same to contain a false muster, shall, upon proof thereof by two witnesses, before a court-martial, be dismissed from the service, and shall thereby be disabled to hold any office or employment in the service of the United States.

ART. 15. Any officer who, willfully or through neglect, suffers to be lost, spoiled, or damaged, any military stores belonging to the United States, shall make good the loss or damage, and be dismissed from the service.

ART. 16. Any enlisted man who sells, or willfully or through neglect wastes the ammunition delivered out to him, shall be punished as a court-martial may direct.

ART. 17. Any soldier who sells, or through neglect loses or spoils his horse, arms, clothing, or accouterments, shall be punished as a court-martial may adjudge, subject to such limitations as may be prescribed by the President by virtue of the power vested in him.[1]

ART. 18. Any officer commanding in any garrison, fort, or barracks of the United States who, for his private advantage, lays any duty or imposition upon or is interested in, the sale of any victuals, liquors, or other

[1] *17th A. W.*, as amended by act of July 27, 1892; see G. O. 57, A. G. 1900.

necessaries of life, brought into such garrison, fort, or barracks, for the use of the soldiers, shall be dismissed from the service.

ART. 19. Any officer who uses contemptuous or disrespectful words against the President, the Vice-President, the Congress of the United States, or the chief magistrate or legislature of any of the United States in which he is quartered, shall be dismissed from the service, or otherwise punished, as a court-martial may direct. Any soldier who so offends shall be punished as a court-martial may direct.

ART. 20. Any officer or soldier who behaves himself with disrespect toward his commanding officer shall be punished as a court-martial may direct.

ART. 21. Any officer or soldier who, on any pretense whatsoever, strikes his superior officer, or draws or lifts up any weapon, or offers any violence against him, being in the execution of his office, or disobeys any lawful command of his superior officer,[1] shall suffer death, or such other punishment as a court-martial may direct.

ART. 22. Any officer or soldier who begins, excites, causes, or joins in any mutiny or sedition, in any troop, battery, company, party, post, detachment, or guard, shall suffer death, or such other punishment as a court-martial may direct.

ART. 23. Any officer or soldier who, being present at any mutiny or sedition, does not use his utmost endeavor to suppress the same or having knowledge of any intended mutiny or sedition, does not, without delay, give information thereof to his commanding officer, shall suffer death, or such other punishment as a court-martial may direct.

ART. 24. All officers, of what condition soever, have power to part and quell all quarrels, frays, and disorders, whether among persons belonging to his[2] own or to

[1] *Disobedience of* an order of a contract surgeon, of a dental surgeon, of a *veterinarian, and a noncommissioned* officer should be charged under the 62d *Article of War; see Form d*, page 139, *post*. Disobedience of an order by a *military convict should also* be charged under the 62d Article of War.

[2] *Sic in Revised Statutes.*

another corps, regiment, troop, battery, or company, and to order officers into arrest, and noncommissioned officers and soldiers into confinement, who take part in the same, until their proper superior officer is acquainted therewith. And whosoever, being so ordered, refuses to obey such officer or noncommissioned officer, or draws a weapon upon him, shall be punished as a court-martial may direct.

ART. 25. No officer or soldier shall use any reproachful or provoking speeches or gestures to another. Any officer who so offends shall be put in arrest. Any soldier who so offends shall be confined, and required to ask pardon of the party offended in the presence of his commanding officer.

ART. 26. No officer or soldier shall send a challenge to another officer or soldier to fight a duel, or accept a challenge so sent. Any officer who so offends shall be dismissed from the service. Any soldier who so offends shall suffer such punishment as a court-martial may direct.

ART. 27. Any officer or noncommissioned officer, commanding a guard, who, knowingly and willingly, suffers any person to go forth to fight a duel shall be punished as a challenger; and all seconds or promoters of duels, and carriers of challenges to fight duels, shall be deemed principals, and punished accordingly. It shall be the duty of any officer commanding an army, regiment, troop, battery, company, post, or detachment, who knows or has reason to believe that a challenge has been given or accepted by any officer or enlisted man under his command, immediately to arrest the offender and bring him to trial.

ART. 28. Any officer or soldier who upbraids another officer or soldier for refusing a challenge shall himself be punished as a challenger; and all officers and soldiers are hereby discharged from any disgrace or opinion of *disadvantage* which might arise from their having refused to accept challenges, as they will only have act

in obedience to the law, and have done their duty as good soldiers, who subject themselves to discipline.

ART. 29. Any officer who thinks himself wronged by the commanding officer of his regiment, and, upon due application to such commander, is refused redress, may complain to the general commanding in the State or Territory where such regiment is stationed. The general shall examine into said complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, transmit to the Department of War a true statement of such complaint, with the proceedings had thereon.

ART. 30. Any soldier who thinks himself wronged by any officer may complain to the commanding officer of his regiment, who shall summon a regimental court-martial for the doing of justice to the complainant. Either party may appeal from such regimental court-martial to a general court-martial; but if, upon such second hearing, the appeal appears to be groundless and vexatious, the party appealing shall be punished at the discretion of said general court-martial.[1]

ART. 31. Any officer or soldier who lies out of his quarters, garrison, or camp, without leave from his

[1] The "regimental court-martial," under the 30th A. W., can not be used as a substitute for a general court-martial or court of inquiry, for it can not try an officer nor make an investigation for the purpose of determining whether he shall be brought to trial. When, if the soldier's complaint should be sustained, the only redress would be a reprimand to the officer, the matter would not be within the jurisdiction of this court. It can only investigate such matters as are susceptible to redress by the doing of justice to the complainant; that is, when in some way he can be set right by putting a stop to the wrongful condition which the officer has caused to exist. Erroneous stoppages of pay, irregularity of detail, the apparent requirement of more labor than from any other soldiers, and the like, might in this way be investigated and the wrongful condition put an end to. The court will in such cases record the evidence and its conclusions of fact, and recommend the action to be taken. The members of the court (and the judge-advocate) will be sworn faithfully to perform their duties as members (and judge-advocate) of the court, and the proceedings will be recorded, as nearly as *practicable*, in the same manner as the proceedings of ordinary courts-*martial*.

superior officer, shall be punished as a court-martial may direct.

ART. 32. Any soldier who absents himself from his troop, battery, company, or detachment, without leave from his commanding officer, shall be punished as a court-martial may direct.

ART. 33. Any officer or soldier who fails, except when prevented by sickness or other necessity, to repair, at the fixed time, to the place of parade, exercise or other rendezvous appointed by his commanding officer, or goes from the same, without leave from his commanding officer, before he is dismissed or relieved, shall be punished as a court-martial may direct.

ART. 34. Any soldier who is found one mile from camp, without leave in writing from his commanding officer, shall be punished as a court-martial may direct.

ART. 35. Any soldier who fails to retire to his quarters or tent at the beating of retreat, shall be punished according to the nature of his offense.

ART. 36. No soldier belonging to any regiment, troop, battery, or company shall hire another to do his duty for him, or be excused from duty, except in cases of sickness, disability, or leave of absence. Every such soldier found guilty of hiring his duty, and the person so hired to do another's duty, shall be punished as a court-martial may direct.

ART. 37. Every noncommissioned officer who connives at such hiring of duty shall be reduced. Every officer who knows and allows such practices shall be punished as a court-martial may direct.

ART. 38. Any officer who is found drunk on his guard, party, or other duty, shall be dismissed from the service. Any soldier who so offends shall suffer such punishment as a court-martial may direct. No court-martial shall sentence any soldier to be branded, marked, or tattooed.

ART. 39. Any sentinel who is found sleeping upon his post, or who leaves it before he is regularly relieved,

shall suffer death or such other punishment as a court-martial may direct.

ART. 40. Any officer or soldier who quits his guard, platoon, or division, without leave from his superior officer, except in a case of urgent necessity, shall be punished as a court-martial may direct.

ART. 41. Any officer who, by any means whatsoever, occasions false alarms in camp, garrison, or quarters, shall suffer death, or such other punishment as a court-martial may direct.

ART. 42. Any officer or soldier who misbehaves himself before the enemy, runs away, or shamefully abandons any fort, post, or guard, which he is commanded to defend, or speaks words inducing others to do the like, or casts away his arms or ammunition, or quits his post or colors to plunder or pillage, shall suffer death, or such other punishment as a court-martial may direct.

ART. 43. If any commander of any garrison, fortress, or post is compelled, by the officers and soldiers under his command, to give up to the enemy or to abandon it, the officers or soldiers so offending shall suffer death, or such other punishment as a court-martial may direct.

ART. 44. Any person belonging to the armies of the United States who makes known the watchword to any person not entitled to receive it, according to the rules and discipline of war, or presumes to give a parole or watchword different from that which he received, shall suffer death, or such other punishment as a court-martial may direct.

ART. 45. Whosoever relieves the enemy with money, victuals, or ammunition, or knowingly harbors or protects an enemy, shall suffer death, or such other punishment as a court-martial may direct.

ART. 46. Whosoever holds correspondence with, or gives intelligence to, the enemy, either directly or indirectly, shall suffer death, or such other punishment as *a court-martial may* direct.

ART. 47. Any officer or soldier who, having received *pay, or having been* duly enlisted in the [illegible] the

United States, deserts the same, shall, in time of war, suffer death, or such other punishment as a court-martial may direct; and in time of peace, any punishment, excepting death, which a court-martial may direct.

ART. 48. Every soldier who deserts the service of the United States shall be liable to serve for such period as shall, with the time he may have served previous to his desertion, amount to the full term of his enlistment; and such soldier shall be tried by a court-martial and punished, although the term of his enlistment may have elapsed previous to his being apprehended and tried.

ART. 49. Any officer who, having tendered his resignation, quits his post or proper duties, without leave and with intent to remain permanently absent therefrom, prior to due notice of the acceptance of the same, shall be deemed and punished as a deserter.

ART. 50. No noncommissioned officer or soldier shall enlist himself in any other regiment, troop, or company, without a regular discharge from the regiment, troop, or company in which he last served, on a penalty of being reputed a deserter, and suffering accordingly. And in case any officer shall knowingly receive and entertain such noncommissioned officer or soldier, or shall not, after his being discovered to be a deserter, immediately confine him and give notice thereof to the corps in which he last served, the said officer shall, by a court-martial, be cashiered.

ART. 51. Any officer or soldier who advises or persuades any other officer or soldier to desert the service of the United States shall, in time of war, suffer death, or such other punishment as a court-martial may direct; and, in time of peace, any punishment, excepting death, which a court-martial may direct.

ART. 52. It is earnestly recommended to all officers and soldiers diligently to attend divine service. Any officer who behaves indecently or irreverently at any place of divine worship shall be brought before a general court-martial, there to be publicly and severely reprimanded by the president thereof. Any soldier who so offends

shall, for his first offense, forfeit one-sixth of a dollar; for each further offense he shall forfeit a like sum, and shall be confined twenty-four hours. The money so forfeited shall be deducted from his next pay, and shall be applied, by the captain or senior officer of his troop, battery, or company, to the use of the sick soldiers of the same.

ART. 53. Any officer who uses any profane oath or execration shall, for each offense, forfeit and pay one dollar. Any soldier who so offends shall incur the penalties provided in the preceding article; and all moneys forfeited for such offenses shall be applied as therein provided.

ART. 54. Every officer commanding in quarters, garrison, or on the march, shall keep good order, and, to the utmost of his power, redress all abuses or disorders which may be committed by any officer or soldier under his command; and if, upon complaint made to him of officers or soldiers beating or otherwise ill-treating any person, disturbing fairs or markets, or committing any kind of riot, to the disquieting of the citizens of the United States, he refuses or omits to see justice done to the offender, and reparation made to the party injured, so far as part of the offender's pay shall go toward such reparation, he shall be dismissed from the service, or otherwise punished as a court-martial may direct.

ART. 55. All officers and soldiers are to behave themselves orderly in quarters and on the march; and whoever commits any waste or spoil, either in walks or trees, parks, warrens, fish ponds, houses, gardens, grain fields, inclosures, or meadows, or maliciously destroys any property whatsoever belonging to inhabitants of the United States (unless by order of a general officer commanding a separate army in the field), shall, besides such penalties as he may be liable to by law, be punished as a court-martial may direct.

ART. 56. Any officer or soldier who does violence to *any person bringing* provisions or other necessaries to

the camp, garrison, or quarters of the forces of the United States in foreign parts, shall suffer death, or such other punishment as a court-martial may direct.

ART. 57. Whosoever, belonging to the armies of the United States in foreign parts, or at any place within the United States or their Territories during rebellion against the supreme authority of the United States, forces a safe-guard, shall suffer death.

ART. 58. In time of war, insurrection, or rebellion, larceny, robbery, burglary, arson, mayhem, manslaughter, murder, assault and battery with intent to kill, wounding, by shooting or stabbing, with an intent to commit murder, rape, or an assault and battery with an intent to commit rape, shall be punishable by the sentence of a general court-martial, when committed by persons in the military service of the United States, and the punishment in any such case shall not be less than the punishment provided, for the like offense, by the laws of the State, Territory, or District in which such offense may have been committed.

ART. 59. When any officer or soldier is accused of a capital crime, or of any offense against the person or property of any citizen of any of the United States which is punishable by the laws of the land, the commanding officer and the officers of the regiment, troop, battery, company, or detachment to which the person so accused belongs are required, except in time of war, upon application duly made by or in behalf of the party injured, to use their utmost endeavors to deliver him over to the civil magistrate, and to aid the officers of justice in apprehending and securing him, in order to bring him to trial. If, upon such application, any officer refuses or willfully neglects, except in time of war, to deliver over such accused person to the civil magistrates, or to aid the officers of justice in apprehending him, he shall be dismissed from the service.[1]

[1] Municipal ordinances and by-laws are part of the "laws of the land" *within the meaning* of the phrase as used in the 59th A. W. (Opin. of *Atty. Gen.; see cir.* 15, A. G. O., 1894.)

ART. 60. Any person in the military service of the United States who makes or causes to be made any claim against the United States, or any officer thereof, knowing such claim to be false or fraudulent; or

[2] Who presents or causes to be presented to any person in the civil or military service thereof, for approval or payment, any claim against the United States or any officer thereof, knowing such claim to be false or fraudulent; or

[3] Who enters into any agreement or conspiracy to defraud the United States by obtaining, or aiding others to obtain, the allowance or payment of any false or fraudulent claim; or

[4] Who, for the purpose of obtaining or aiding others to obtain, the approval, allowance, or payment of any claim against the United States, or against any officer thereof, makes or uses, or procures or advises the making or use of, any writing or other paper, knowing the same to contain any false or fraudulent statement; or

[5] Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, makes, or procures or advises the making of, any oath to any fact or to any writing or other paper, knowing such oath to be false; or

[6] Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, forges or counterfeits, or procures or advises the forging or counterfeiting of, any signature upon any writing or other paper, or uses, or procures or advices the use of, any such signature, knowing the same to be forged or counterfeited; or

[7] Who, having charge, possession, custody, or control of any money or other property of the United States, furnished or intended for the military service thereof, knowingly delivers, or causes to be delivered, to any person *having authority* to receive the same, any amount

thereof less than that for which he receives a certificate or receipt; or

[8] Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States, furnished or intended for the military service thereof, makes or delivers to any person such writing, without having full knowledge of the truth of the statements therein contained, and with intent to defraud the United States; or

[9] Who, steals, embezzles, knowingly and willfully misappropriates, applies to his own use or benefit, or wrongfully or knowingly sells or disposes of any ordnance, arms, equipments, ammunition, clothing, subsistence stores, money, or other property of the United States, furnished or intended for the military service thereof; or

[10] Who knowingly purchases, or receives in pledge for any obligation or indebtedness, from any soldier, officer, or other person who is a part of or employed in said forces or service, any ordnance, arms, equipments, ammunition, clothing, subsistence stores, or other property of the United States, such soldier, officer, or other person not having lawful right to sell or pledge the same,

Shall, on conviction thereof, be punished by fine or imprisonment, or by such other punishment as a court-martial may adjudge, *or by any or all of said penalties.*[1] And if any person, being guilty of any of the offenses aforesaid, while in the military service of the United States, receives his discharge, or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial, in the same manner and to the same extent as if he had not received such discharge nor been dismissed.

ART. 61. Any officer who is convicted of conduct unbecoming an officer and a gentleman shall be dismissed from the service.

ART. 62. All crimes not capital, and all disorders and

[1] *The words in italics* were added by act of March 2, 1901, page 131, post.

neglects, which officers and soldiers may be guilty of, to the prejudice of good order and military discipline, though not mentioned in the foregoing Articles of War, are to be taken cognizance of by a general, or a regimental, garrison, or field officers'[1] court-martial, according to the nature and degree of the offense, and punished at the discretion of such court.[2]

ART. 63. All retainers to the camp, and all persons serving with the armies of the United States in the field, though not enlisted soldiers, are to be subject to orders according to the rules and discipline of war.

ART. 64. The officers and soldiers of any troops, whether militia or others, mustered and in pay of the United States, shall, at all times and in all places, be governed by the Articles of War, and shall be subject to be tried by courts-martial.

ART. 65. Officers charged with crime shall be arrested and confined in their barracks, quarters, or tents, and deprived of their swords by the commanding officer. And any officer who leaves his confinement before he is set at liberty by his commanding officer shall be dismissed from the service.

ART. 66. Soldiers charged with crimes shall be confined until tried by court-martial, or released by proper authority.

ART. 67. No provost marshal, or officer commanding a guard, shall refuse to receive or keep any prisoner committed to his charge by an officer belonging to the forces of the United States; provided the officer committing shall, at the same time, deliver an account in writing, signed by himself, of the crime charged against the prisoner.

[1] The "field officer's" court was abolished by sec. 2 of the summary court act of June 18, 1898, page 128, *post*.

[2] "SEC. 3. That fraudulent enlistment, and the receipt of any pay or allowance thereunder, is hereby declared a military offense and made punishable by court-martial, under the 62d Article of War." (Act of July 27, 1892; see *O. O. 57, A. G. O.*, 1892.) For definition of fraudulent enlistment, see page *14, note 4, ante, and for forms* for charges see page 140, *post*.

ART. 68. Every officer to whose charge a prisoner is committed shall, within twenty-four hours after such commitment, or as soon as he is relieved from his guard, report in writing, to the commanding officer, the name of such prisoner, the crime charged against him, and the name of the officer committing him; and if he fails to make such report, he shall be punished as a court-martial may direct.

ART. 69. Any officer who presumes, without proper authority, to release any prisoner committed to his charge, or suffers any prisoner so committed to escape, shall be punished as a court-martial may direct.

ART. 70. No officer or soldier put in arrest shall be continued in confinement more than eight days, or until such time as a court-martial can be assembled.

ART. 71. When an officer is put in arrest for the purpose of trial, except at remote military posts or stations, the officer by whose order he is arrested shall see that a copy of the charges on which he is to be tried is served upon him within eight days after his arrest, and that he is brought to trial within ten days thereafter, unless the necessities of the service prevent such trial; and then he shall be brought to trial within thirty days after the expiration of said ten days. If a copy of the charges be not served, or the arrested officer be not brought to trial, as herein required, the arrest shall cease. But officers released from arrest, under the provisions of this article, may be tried, whenever the exigencies of the service shall permit, within twelve months after such release from arrest.

ART. 72. Any general officer commanding an army, a Territorial division or a department, or colonel commanding a separate department, may appoint general courts-martial whenever necessary. But when any such commander is the accuser or prosecutor of any officer under his command the court shall be appointed by the President; and its proceedings and sentence shall be sent *directly* to the Secretary of War, by whom they

shall be laid before the President for his approval or orders in the case.[1]

ART. 73. In time of war the commander of a division, or of a separate brigade of troops, shall be competent to appoint a general court-martial. But when such commander is the accuser or prosecutor of any person under his command, the court shall be appointed by the next higher commander.

ART. 74. Officers who may appoint a court-martial shall be competent to appoint a judge-advocate for the same.

ART. 75. General courts-martial may consist of any number of officers from five to thirteen, inclusive; but they shall not consist of less than thirteen, when that number can be convened without manifest injury to the service.

ART. 76. When the requisite number of officers to form a general court-martial is not present in any post or detachment, the commanding officer shall, in cases which require the cognizance of such a court, report to the commanding officer of the department, who shall thereupon order a court to be assembled at the nearest post or department at which there may be such a requisite number of officers, and shall order the party accused, with necessary witnesses to be transported to the place where the said court shall be assembled.

ART. 77. Officers of the Regular Army shall not be competent to sit on courts-martial to try the officers or soldiers of other forces, except as provided in Article 78.

ART. 78. Officers of the Marine Corps, detached for service with the Army by order of the President, may be associated with officers of the Regular Army on courts-martial for the trial of offenders belonging to the Regular Army, or to forces of the Marine Corps so detached; and in such cases the orders of the senior officer of either corps, who may be present and duly *authorized*, shall be obeyed.

[1] *Act of July 5, 1884*; see G. O. 73, A. G. O., 1884.

ART. 79. Officers shall be tried only by general courts-martial; and no officer shall, when it can be avoided, be tried by officers inferior to him in rank.[1]

ART. 81. Every officer commanding a regiment or corps shall, subject to the provisions of Article 80, be competent to appoint, for his own regiment or corps, courts-martial, consisting of three officers, to try offenses not capital.

ART. 82. Every officer commanding a garrison, fort, or other place, where the troops consist of different corps, shall, subject to the provisions of Article 80, be competent to appoint, for such garrison or other place, courts-martial, consisting of three officers, to try offenses not capital.

ART. 83. Regimental and garrison courts-martial and summary courts, detailed under existing laws to try enlisted men, shall not have power to try capital cases or commissioned officers, but shall have power to award punishment not to exceed confinement at hard labor for three months or forfeiture of three months' pay, or both, and in addition thereto, in the case of noncommissioned officers, reduction to the ranks, and in the case of first-class privates reduction to second-class privates: *Provided*, That a summary court shall not adjudge confinement and forfeiture in excess of a period of one month unless the accused shall before trial consent in writing to trial by said court, but in any case of refusal to so consent the trial may be had either by general, regimental, or garrison court-martial, or by said summary court, but in case of trial by said summary court without consent as aforesaid the court shall not adjudge confinement or forfeiture of pay for more than one month.[2]

ART. 84. The judge-advocate shall administer to each member of the court, before they proceed upon any trial, the following oath, which shall also be taken by all members of regimental and garrison courts-martial: "You

[1] *Art. 80* repealed by act of June 18, 1898, [illegible]

[2] 83d A. W., as amended by act of March [illegible]

A B, do swear that you will well and truly try and determine, according to evidence, the matter now before you, between the United States of America and the prisoner to be tried, and that you will duly administer justice, without partiality, favor, or affection, according to the provisions of the rules and articles for the government of the armies of the United States, and if any doubt should arise, not explained by said articles, then according to your conscience, the best of your understanding, and the custom of war in like cases; and you do further swear that you will not divulge the sentence of the court until it shall be published by the proper authority, except to the judge-advocate; neither will you disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof, as a witness, by a court of justice, in due course of law. So help you God."

ART. 85. When the oath has been administered to the members of a court-martial, the president of the court shall administer to the judge-advocate, or person officiating as such, an oath in the following form: "You, A B, do swear that you will not disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof, as a witness, by a court of justice, in due course of law; nor divulge the sentence of the court to any but the proper authority, until it shall be duly disclosed by the same. So help you God."

ART. 86. A court-martial may punish, at discretion, any person who uses any menacing words, signs, or gestures, in its presence, or who disturbs its proceedings by any riot or disorder.

ART. 87. All members of a court-martial are to behave with decency and calmness.

ART. 88. Members of a court-martial may be challenged by a prisoner, but only for cause stated to the court. The court shall determine the relevancy and validity thereof, and shall not receive a challenge to more than one member at a time.

ART. 89. When a prisoner, arraigned before a general court-martial, from obstinacy and deliberate design, stands mute or answers foreign to the purpose, the court may proceed to trial and judgment as if the prisoner had pleaded not guilty.

ART. 90. The judge-advocate, or some person deputed by him, or by the general or officer commanding the Army, detachment, or garrison, shall prosecute in the name of the United States, but when the prisoner has made his plea, he shall so far consider himself counsel for the prisoner as to object to any leading question to any of the witnesses, and to any question to the prisoner the answer to which might tend to criminate himself.

ART. 91. The depositions of witnesses residing beyond the limits of the State, Territory, or District in which any military court may be ordered to sit, if taken on reasonable notice to the opposite party and duly authenticated, may be read in evidence before such court in cases not capital.[1]

ART. 92. All persons who give evidence before a court-martial shall be examined on oath, or affirmation, in the following form: "You swear (or affirm) that the evidence you shall give, in the case now in hearing, shall be the truth, the whole truth, and nothing but the truth. So help you God."

ART. 93. A court-martial shall, for reasonable cause, grant a continuance to either party, for such time, and as often, as may appear to be just: *Provided*, That if the prisoner be in close confinement, the trial shall not be delayed for a period longer than sixty days.[2]

ART. 95. Members of a court-martial, in giving their votes, shall begin with the youngest in commission.

[1] "SEC. 4. That judge-advocates of departments and of courts-martial, and the trial officers of summary courts, are hereby authorized to administer oaths for the purposes of the administration of military justice, and for other purposes of military administration." (Act of July 27, 1892, see G. O. 57, A. G. O., 1892.)

[2] *Art. 94* repealed by act of March 2, 1901, sec. 2, pages 130, post.

ART. 96. No person shall be sentenced to suffer death, except by the concurrence of two-thirds of the members of a general court-martial, and in the cases herein expressly mentioned.

ART. 97. No person in the military service shall, under the sentence of a court-martial, be punished by confinement in a penitentiary, unless the offense of which he may be convicted would, by some statute of the United States, or by some statute of the State, Territory, or District in which such offense may be committed, or by the common law, as the same exists in such State, Territory, or District, subject such convict to such punishment.

ART. 98. No person in the military service shall be punished by flogging, or by branding, marking, or tattooing on the body.

ART. 99. No officer shall be discharged or dismissed from the service, except by order of the President, or by sentence of a general court-martial; and in time of peace no officer shall be dismissed, except in pursuance of the sentence of a court-martial, or in mitigation thereof.

ART. 100. When an officer is dismissed from the service for cowardice or fraud, the sentence shall further direct that the crime, punishment, name and place of abode of the delinquent shall be published in the newspapers in and about the camp, and in the State from which the offender came, or where he usually resides; and after such publication it shall be scandalous for an officer to associate with him.

ART. 101. When a court-martial suspends an officer from command it may also suspend his pay and emoluments for the same time, according to the nature of his offense.

ART. 102. No person shall be tried a second time for the same offense.

ART. 103. No person shall be liable to be tried and *punished by a general* court-martial for any offense

which appears to have been committed more than two years before the issuing of the order for such trial, unless, by reason of having absented himself, or of some other manifest impediment, he shall not have been amenable to justice within that period.

No person shall be tried or punished by a court-martial for desertion in time of peace and not in the face of an enemy, committed more than two years before the arraignment of such person for such offense, unless he shall meanwhile have absented himself from the United States, in which case the time of his absence shall be excluded in computing the period of the limitation: *Provided*, That said limitation shall not begin until the end of the term for which said person was mustered into the service.[1]

ART. 104. No sentence of a court-martial shall be carried into execution until the same shall have been approved by the officer ordering the court, or by the officer commanding for the time being.[2]

ART. 105. No sentence of a court-martial, inflicting the punishment of death, shall be carried into execution until it shall have been confirmed by the President; except in the cases of persons convicted in time of war, as spies, mutineers, deserters, or murderers, and in the cases of guerrilla marauders, convicted in time of war, of robbery, burglary, arson, rape, assault with intent to commit rape, or of violation of the laws and customs of war; and in such excepted cases the sentence of death may be carried into execution upon confirmation by the commanding general in the field, or the commander of the department, as the case may be.

ART. 106. In time of peace no sentence of a court-martial, directing the dismissal of an officer, shall be carried into execution, until it shall have been confirmed by the President.

[1] 103d A. W., as amended by act of April 11, 1890; see G. O. 45, A. G. O., 1890.

[2] *104th A. W.*, as amended by act of July 27, 1892; see G. O. 57, A. G. O., *1892.*

ART. 107. No sentence of a court-martial appointed by the commander of a division or of a separate brigade of troops, directing the dismissal of an officer, shall be carried into execution until it shall have been confirmed by the general commanding the army in the field to which the division or brigade belongs.

ART. 108. No sentence of a court-martial, either in time of peace or in time of war, respecting a general officer, shall be carried into execution until it shall have been confirmed by the President.

ART. 109. All sentences of a court-martial may be confirmed and carried into execution by the officer ordering the court, or by the officer commanding for the time being, where confirmation by the President or by the commanding general in the field, or commander of the department, is not required by these articles.[1]

ART. 111. Any officer who has authority to carry into execution the sentence of death, or of dismissal of an officer, may suspend the same until the pleasure of the President shall be known; and, in such case, he shall immediately transmit to the President a copy of the order of suspension, together with a copy of the proceedings of the court.

ART. 112. Every officer who is authorized to order a general court-martial shall have power to pardon or mitigate any punishment adjudged by it, except the punishment of death or of dismissal of an officer. Every officer commanding a regiment or garrison in which a regimental or garrison court-martial may be held shall have power to pardon or mitigate any punishment which such court may adjudge.[2]

ART. 113. Every judge-advocate, or person acting as such, at any general court-martial, shall, with as much expedition as the opportunity of time and distance of place may admit, forward the original proceedings and sentence of such court to the Judge-Advocate General

[1] Article 110 repealed by act of June 18, 1898, sec. 2, page 428, *post*.

[2] See par. 951, A. R.

of the Army, in whose office they shall be carefully preserved.

ART. 114. Every party tried by a general court-martial shall, upon demand thereof made by himself or by any person in his behalf, be entitled to a copy of the proceedings and sentence of such court.

ART. 115. A court of inquiry to examine into the nature of any transaction of, or accusation or imputation against, any officer or soldier, may be ordered by the President or by any commanding officer; but, as courts of inquiry may be perverted to dishonorable purposes, and may be employed, in the hands of weak and envious commandants, as engines for the destruction of military merit, they shall never be ordered by any commanding officer except upon a demand by the officer or soldier whose conduct is to be inquired of.

ART. 116. A court of inquiry shall consist of one or more officers, not exceeding three, and a recorder, to reduce the proceedings and evidence to writing.

ART. 117. The recorder of a court of inquiry shall administer to the members the following oath: "You shall well and truly examine and inquire, according to the evidence, into the matter now before you, without partiality, favor, affection, prejudice, or hope of reward. So help you God." After which the president of the court shall administer to the recorder the following oath: "You, A B, do swear that you will, according to your best abilities, accurately and impartially record the proceedings of the court and the evidence to be given in the case in hearing. So help you God."

ART. 118. A court of inquiry, and the recorder thereof, shall have the same power to summon and examine witnesses as is given to courts-martial and the judge-advocates thereof. Such witnesses shall take the same oath which is taken by witnesses before courts-martial, and the party accused shall be permitted to examine and cross-examine them, [illegible] investigate the circumstances in qu[illegible]

ART. 119. A court of inquiry shall not give an opinion on the merits of the case inquired of unless specially ordered to do so.

ART. 120. The proceedings of a court of inquiry must be authenticated by the signatures of the recorder and the president thereof, and delivered to the commanding officer.

ART. 121. The proceedings of a court of inquiry may be admitted as evidence by a court-martial, in cases not capital nor extending to the dismissal of an officer: *Provided*, That the circumstances are such that oral testimony can not be obtained.

ART. 122. If, upon marches, guards, or in quarters, different corps of the Army happen to join or do duty together, the officer highest in rank of the line of the Army, Marine Corps, or militia, by commission, there on duty or in quarters, shall command the whole, and give orders for what is needful in the service, unless otherwise specially directed by the President, according to the nature of the case.

ART. 123. In all matters pertaining to the rank, duties, and rights of officers, the same rules and regulations shall apply to officers of the Regular Army and to volunteers commissioned in or mustered into said service, under the laws of the United States, for a limited period.

ART. 124. Officers of the militia of the several States, when called into the service of the United States, shall on all detachments, courts-martial, and other duty, wherein they may be employed in conjunction with the regular or volunteer forces of the United States, take rank next after all officers of the like grade in said regular or volunteer forces, notwithstanding the commissions of such militia officers may be older than the commissions of the said officers of the regular or volunteer forces of the United States.

ART. 125. In case of the death of any officer, the major of his regiment or the officer doing the major's duty, or the second officer in command at any post or garrison, as the case may be, shall immediately secure all the

effects then in camp or quarters, and shall make, and transmit to the office of the Department of War, an inventory thereof.

ART. 126. In case of the death of any soldier, the commanding officer of his troop, battery, or company shall immediately secure all his effects then in camp or quarters, and shall, in the presence of two other officers, make an inventory thereof, which he shall transmit to the office of the Department of War.

ART. 127. Officers charged with the care of the effects of deceased officers or soldiers shall account for and deliver the same, or the proceeds thereof, to the legal representatives of such deceased officers or soldiers. And no officer so charged shall be permitted to quit the regiment or post until he has deposited in the hands of the commanding officer all the effects of such deceased officers or soldiers not so accounted for and delivered.

ART. 128. The foregoing articles shall be read and published, once in every six months, to every garrison, regiment, troop, or company in the service of the United States, and shall be duly observed and obeyed by all officers and soldiers in said service.

OTHER STATUTORY PROVISIONS DEFINING COURT-MARTIAL OFFENSES.

SEC. 1343, R. S. "All persons who, in time of war, or of rebellion against the supreme authority of the United States, shall be found lurking or acting as spies, in or about any of the fortifications, posts, quarters, or encampments of any of the armies of the United States, or elsewhere, shall be triable by a general court-martial, or by a military commission, and shall, on conviction thereof, suffer death."

SEC. 5306, R. S. "Every officer of the United States, civil, military, or naval, and every sutler, soldier, marine, or other person, who takes, or causes to be taken into a State declared to be in insurrection, or to any other

"*to be thence* taken into such State, or who trans-

"*alls, or* otherwise disposes of therein, any goods,

wares, or merchandise whatsoever, except in pursuance of license and authority of the President, as provided in this title [see sec. 5304], or who makes any false statement or representation upon which license and authority is granted for such transportation, sale, or other disposition, or who, under any license or authority obtained, willfully and knowingly transports, sells, or otherwise disposes of any other goods, wares, or merchandise than such as are in good faith so licensed and authorized, or who willfully and knowingly transports, sells, or disposes of the same, or any portion thereof, in violation of the terms of such license or authority, or of any rule or regulation prescribed by the Secretary of the Treasury concerning the same, or who is guilty of any act of embezzlement, of willful misappropriation of public or private money or property, of keeping false accounts, or of willfully making any false returns, shall be deemed guilty of a misdemeanor, and shall be fined not more than five thousand dollars, and imprisoned in the penitentiary not more than three years. Violations of this section shall be cognizable before any court, civil or military, competent to try the same."

SEC. 5313, R. S. "All persons in the military or naval service of the United States are prohibited from buying or selling, trading, or in any way dealing in captured or abandoned property, whereby they shall receive or expect any profit, benefit, or advantage to themselves, or any other person, directly or indirectly connected with them, and it shall be the duty of such person whenever such property comes into his possession or custody, or within his control, to give notice thereof to some agent, appointed by virtue of this title [see sec. 5305], and to turn the same over to such agent without delay. Any officer of the United States, civil, military, or naval, or any sutler, soldier, or marine, or other person who shall violate any provision of this section shall be deemed guilty of a misdemeanor, and shall be fined not more than five thousand dollars, and imprisoned in the penitentiary not more than three years. Violations of this

section shall be cognizable before any court, civil or military, competent to try the same."

ACT ESTABLISHING THE SUMMARY COURT.

Be it enacted, etc., That the Act entitled "An act to promote the administration of justice in the Army," approved October first, eighteen hundred and ninety, as supplemented and amended by subsequent legislation, be, and the same is hereby, amended so as to read as follows:

"That the commanding officer of each garrison, fort, or other place, regiment or corps, detached battalion, or company, or other detachment in the Army, shall have power to appoint for such place or command, or in his discretion for each battalion thereof, a summary court to consist of one officer to be designated by him, before whom enlisted men[1] who are to be tried for offenses, such as were prior to the passage of the Act 'to promote the administration of justice in the Army,' approved October first, eighteen hundred and ninety, cognizable by garrison or regimental courts-martial, and offenses cognizable by field officers detailed to try offenders under the provisions of the eightieth and one hundred and tenth articles of war, shall be brought to trial within twenty-four hours of the time of the arrest, or as soon thereafter as practicable, except when the accused is to be tried by general court-martial; but such summary court may be appointed and the officer designated by superior authority when by him deemed desirable; and the officer holding the summary court shall have power to administer oaths and to hear and determine such cases, and when satisfied of the guilt of the accused adjudge the punishment to be inflicted, which said punishment shall not exceed confinement at hard labor for one month and forfeiture of one month's pay, and, in the case of a noncommissioned officer, reduction to the

[1] Retainers to the camp and other classes of persons mentioned in the 83d A. W. *are not triable* by summary court.

ranks in addition thereto; that there shall be a summary court record kept at each military post and in the field at the headquarters of the proper command, in which shall be entered a record of all cases heard and determined and the action had thereon; and no sentence adjudged by said summary court shall be executed until it shall have been approved by the officer appointing the court, or by the officer commanding for the time being: *Provided*, That when but one commissioned officer is present with a command he shall hear and finally determine such cases: *And provided further*, That no one while holding the privileges of a certificate of eligibility to promotion shall be brought before a summary court, and that noncommissioned officers shall not, if they object thereto, be brought to trial before summary courts without the authority of the officer competent to order their trial by general court-martial, but shall in such cases be brought to trial before garrison, regimental, or general courts-martial, as the case may be."

SEC. 2. That articles eighty and one hundred and ten of the Rules and Articles for the Government of the Armies of the United States be, and the same are hereby, repealed.

SEC. 3. That the commanding officers authorized to approve the sentences of summary courts and superior authority shall have power to remit or mitigate the same.

SEC. 4. That post and other commanders shall, in time of peace, on the last day of each month, make a report to the department headquarters of the number of cases determined by summary court during the month, setting forth the offenses committed and the penalties awarded, which report shall be filed in the office of the judge-advocate of the department, and may be destroyed when no longer of use.

SEC. 5. That soldiers sentenced by court-martial to dishonorable discharge and confinement shall, until discharged from such confinement, remain subject to the *Articles of War* and other laws relating to the administration of military justice.

SEC. 6. That it shall be lawful for any civil officer having authority under the laws of the United States, or of any State, Territory, or District, to arrest offenders, to summarily arrest a deserter from the military service of the United States and deliver him into the custody of the military authority of the General Government.

SEC. 7. That this Act shall take effect sixty days after its passage.

Approved June 18, 1898.

ACT TO PREVENT THE FAILURE OF MILITARY JUSTICE.

Be it enacted, etc., That every person not belonging to the Army of the United States who, being duly subpœnaed to appear as a witness before a general court-martial of the Army, willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or produce documentary evidence which such person may have been legally subpœnaed to produce, shall be deemed guilty of a misdemeanor, for which such person shall be punished on information in the district court of the United States; and it shall be the duty of the United States district attorney, on the certification of the facts to him by the general court-martial, to file an information against and prosecute the person so offending, and the punishment of such person, on conviction, shall be a fine of not more than five hundred dollars or imprisonment not to exceed six months, or both, at the discretion of the court: *Provided*, That this shall not apply to persons residing beyond the State, Territory, or District in which such general court-martial is held, and that the fees of such witness, and his mileage at the rates provided for witnesses in the United States district court for said State, Territory, or District shall be duly paid or tendered said witness, such amounts to be paid by the Pay Department of the Army out of the appropriation for compensation of witnesses: *Provided*, That no witness shall be compelled to incriminate himself or to answer any questions which may tend to incriminate or degrade him.

SEC. 2. That article ninety-four, section thirteen hundred and forty-two, of the Revised Statutes of the United States be, and the same is hereby, repealed.

SEC. 3. That section one hundred and eighty-three of the Revised Statutes of the United States be, and the same is hereby, amended so as to read as follows:

"SEC. 183. Any officer or clerk of any of the departments lawfully detailed to investigate frauds on, or attempts to defraud, the Government, or any irregularity or misconduct of any officer or agent of the United States, and any officer of the Army detailed to conduct an investigation, and the recorder, and, if there be none, the presiding officer of any military board appointed for such purpose, shall have authority to administer an oath to any witness attending to testify or depose in the course of such investigation."

SEC. 4. That article eighty-three, section thirteen hundred and forty-two, of the Revised Statutes of the United States be, and the same is hereby, amended to read as follows:

"ARTICLE 83. Regimental and garrison courts-martial and summary courts detailed under existing laws to try enlisted men shall not have power to try capital cases or commissioned officers, but shall have power to award punishment not to exceed confinement at hard labor for three months or forfeiture of three months' pay, or both, and in addition thereto, in the case of noncommissioned officers reduction to the ranks and in the case of first-class privates reduction to second-class privates: *Provided*, That a summary court shall not adjudge confinement and forfeiture in excess of a period of one month, unless the accused shall before trial consent in writing to trial by said court, but in any case of refusal to so consent, the trial may be had either by general, regimental, or garrison court-martial, or by said summary court, but in case of trial by said summary court without consent as aforesaid, the court shall not adjudge confinement or forfeiture of pay for more than one month."

SEC. 5. That article sixty, section thirteen hundred and forty-two, of the Revised Statutes of the United States be, and the same is hereby, amended by inserting after the words "shall, on conviction thereof, be punished by fine or imprisonment, or by such other punishment as a court-martial may adjudge," the words "or by any or all of said penalties."

Approved, March 2, 1901.

GENERAL FORMS.

FORMS FOR CHARGES.

Charge and specification preferred against Private A—— B——, Co. ——, —— U. S. Infantry.

ARTICLE 17.

(*a*) **Charge:** "Selling clothing,[1] in violation of the 17th Article of War."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, did sell the following articles of his uniform clothing, issued to him, viz: One (1) forage cap, value $——; one (1) overcoat, made, value $——; and one (1) blanket, woolen, value $——; total value of articles sold $——.

"This at ——, on the —— of ——, 19—."

C—— D——,
Captain, —— Infantry,
Officer Preferring Charge.

Witnesses:
1st Sergeant E—— F——, Co. ——, —— Infantry.
Private G—— H——, Troop ——, —— Cavalry.
Mr. I—— K——. citizen.

or,[2]

(*b*) "Losing accouterments, in violation of the 17th Article of War."[3]

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[1] See page 18, Sec. III, *ante*.

[2] The loss or sale of ammunition should be charged under the 62d A. W.

[3] If a soldier is known to have unlawfully disposed of his clothing or accouterments in a way not mentioned in the 17th Article, the charge should be laid under the 62d Article.

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, did, through neglect, lose the following articles of his accouterments, issued to him, viz: One (1) ——, value $——; and one (1) ——, value $——; total value of articles lost, $———.

"This at —— on the —— of ——, 19—."

ARTICLE 20.

Charge: "Behaving with disrespect toward his commanding officer, in violation of the 20th Article of War."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, did behave himself with disrespect toward his commanding officer, Captain C—— D——, —— U. S. Infantry, by (*here insert language or describe the conduct*).

"This at —— on the —— of ——, 19—."

ARTICLE 21.

(*a*) **Charge:** "Disobedience of orders,[1] in violation of the 21st Article of War."

Specification: "In that Private A—— B——, Co. ——, —— U. S Infantry, having received a lawful command from his superior officer, 2d Lieut. C—— D——, —— U. S. Infantry, to (*insert order*), did willfully disobey the same.

"This at ——, on the —— of ——, 19—."

or,

(*b*) "Striking his superior officer, in violation of the 21st Article of War."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, did strike his superior officer, 2d Lieut. C—— D——, —— U. S. Infantry, with (*here*

[1] A noncompliance by a soldier with an order emanating from a contract surgeon, a dental surgeon, a veterinarian, or noncommissioned officer is not an offense under this article, but one to be charged, in general, under the 62d. A simple neglect to comply with a standing order is an offense under the 62d Article, and not under the 21st, which implies a willful defiance of authority.

describe the offense) the said lieutenant being in the execution of his office.

"This at ——, on the —— of ——, 19—."

ARTICLE 24.

Charge: "Disobedience of orders, in violation of the 24th Article of War."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, being present and taking part in a (quarrel, fray *or* disorder) among enlisted men of ——, and having been duly ordered by (*insert name and rank of officer or noncommissioned officer*) into confinement (*or* arrest) did refuse to obey and did disobey said order.

"This at ——, on the —— of ——, 19—."

ARTICLE 32.

Charge: "Absence without leave, in violation of the 32d Article of War."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, did absent himself from his company, without leave from his commanding officer, from ——, on the —— of ——, 19—, until ——, on the —— of ——, 19—.

"This at ——."

ARTICLE 33.

(*a*) **Charge**: "Absence from parade, in violation of the 33d Article of War."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, not being prevented by sickness or other necessity, did fail to repair, at the fixed time, to the place of parade appointed by his commanding officer.

"This at ——, on the —— of ——, 19—."

or,

(*b*) "Absence from 11 p. m. inspection, in violation of the 33d Article of War."

Specification: "In that private A—— B——, Co. ——, —— U. S. Infantry, not being prevented by sickness or

other necessity, did fail to repair, at the fixed time, to the place appointed by his commanding officer for 11 o'clock p. m. inspection of his company.

"This at——, on the —— of ——, 19—."

ARTICLE 38.

(*a*) **Charge:** "Drunkenness on duty, in violation of the 38th Article of War."

Specification: "In that Private A—— B——, Troop ——, —— U. S. Cavalry, while on duty on stable guard, was found drunk.

"This at ——, on the —— of ——, 19—."

or,

(*b*) "In that Private A—— B——, Co. ——, —— U. S. Infantry, while on duty at drill, was found drunk.

"This at ——, on the —— of ——, 19—."

ARTICLE 39.

(*a*) **Charge:** "Sleeping on post, in violation of the 39th Article of War."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, being on guard and posted as a sentinel, was found sleeping on his post.

"This at ——, on the —— of ——, 19—."

or,

(*b*) "Leaving post, in violation of the 39th Article of War."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, being on guard and posted as a sentinel, did leave his post before he was regularly relieved.

"This at ——, on the —— of ——, 19—."

ARTICLE 40.

Charge: "Quitting guard, in violation of the 40th Article of War."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, being on guard, did, without urgent necessity, quit his guard without leave from his superior officer.

"*This at* ——, on the —— of ——, 19—."

ARTICLE 47.

(*a*) **Charge:** "Desertion, in violation of the 47th Article of War."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, a soldier in the service of the United States,[1] did desert the same at —— on or about the —— of ——, 19—, and did remain absent in desertion until he was apprehended (*or* until he surrendered himself), at ——, on or about the —— of ——, 19—."

(*If a soldier deserts and enlists in another company, he should be charged with desertion under the 47th Article, and also with "fraudulent enlistment, to the prejudice of good order and military discipline," under the 62d.*[2] *An additional specification to the charge of desertion should set forth the offense as follows:*)

Specification 2: "In that Private A—— B——, Troop ——, —— U. S. Cavalry, *alias* Private C—— D——, Company ——, —— U. S. Infantry, a soldier in the service of the United States, did desert the same at —— on or about the —— of ——, 19—, by enlisting under the name of C—— D——, in Company ——, —— U. S. Infantry, without a regular discharge from said Troop ——, —— U. S. Cavalry.

ARTICLE 51.

Charge: "Advising (*or* persuading) a soldier to desert, in violation of the 51st Article of War."

Specification: "In that Private A—— B——, —— U. S. Infantry, did advise (*or* persuade) Private A—— B——, —— U. S. Infantry, to desert the service of the United States (*if desertion occurred, state the fact*).

"This at ——, on the —— of ——, 19—."

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[1] This form is applicable either in case a soldier has "received pay" or has been "duly enlisted." In either case the "statement of service" will enable the court to determine as to the statute of limitation and proper punishment. (*See page 34, par. 9, and page 52, ante.*)

[2] *See 50th A. W. For* form for "fraudulent enlistment," see page 140, post

ARTICLE 58.

Charge: "Murder, in violation of the 58th Article of War."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, did in time of (war, insurrection, *or* rebellion) willfully, unlawfully, feloniously and with malice aforethought murder and kill —— —— by (*here set forth the manner of killing*).

"This at ——, on or about the —— of ——, 19—."

ARTICLE 60.

(*a*) **Charge:** "Causing to be presented to the United States authorities for payment a false and fraudulent claim against the United States, knowing such claim to be false and fraudulent, in violation of the 60th Article of War."

Specification: "In that 1st Lieut. A—— B——, —— U. S. Infantry, having duly assigned to —— —— and caused to be presented for payment to —— ——, Deputy Paymaster General, U. S. Army, by —— ——, his official pay account and claim against the United States for pay in full for the month of ——, 19—, amounting to the sum of —— ($——), and the same having been duly satisfied and paid on such presentation, on or about ——, 19—, did subsequently cause to be presented for payment by his assignee, —— ——, to the said —— ——, Deputy Paymaster General, another, and a false and fraudulent, official pay account and claim against the United States for pay for the same month and in the same amount, he, the said Lieut. A—— B——, well knowing that this subsequent account and claim was false and fraudulent.

"This at ——, on or about the —— of ——, 19—."

(*b*) **Charge:** "Larceny, in violation of the 60th Article of War."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, did feloniously take, steal, and carry away ——, of the value of $——, the property of the

United States, furnished and intended for the military service thereof.

"This at ——, on the —— of, 19—."

ARTICLE 61.

Charge: "Conduct unbecoming an officer and a gentleman, in violation of the 61st Article of War."

Specification 1: "In that 1st Lieut. A—— B——, —— U. S. Infantry, having, for value received, assigned to —— ——, his official pay account and claim for pay in full against the United States for the month of ——, 19—, which said account was made and executed by him in due manner and form, did, nevertheless, for a valuable consideration, assign to —— ——, another and a second pay account and claim of the same nature and form, and for the same amount and period, he, the said Lieut. A—— B——, well knowing at the time he made such assignment that the second account and claim was false and fraudulent.

"This at ——, on or about the —— of ——, 19—."

Specification 2: "In that 1st Lieut. A—— B——, —— U. S. Infantry, having made and executed in due form his certain pay account as an officer in the army for the month of ——, 19—, and having duly assigned the said account to —— ——, thereby parting with all individual title and interest therein, and without having redeemed the same, and while it remained in full force and effect, did falsely certify with his official signature to the correctness of another official pay account for pay for the said month of ——, 19—, duly made, executed, and assigned to —— ——, which said certificate was in words as follows: 'I certify that the amount charged in the foregoing account is correct and just.'

"This at ——, on or about the —— of ——, 19—."

ARTICLE 62.

(a) ***Charge:*** "*Neg*lect of duty, to the prejudice of ***good order and mili***tary discipline."

Specification: "In that Private A—— B——, Co.——, —— U. S. Infantry, being on duty as ——, and it being his duty as such to ——, did fail and neglect to perform said duty.

"This at ——, on the —— of ——, 19—."

(*b*) **Charge:** "Drunkenness and disorderly conduct, to the prejudice of good order and military discipline."

Specification: "In that Private A—— B——, Co.——, —— U. S. Infantry, was drunk and disorderly in ——.

"This at ——, on the —— of ——, 19—."

(*c*) **Charge:** "Suffering a prisoner to escape, to the prejudice of good order and military discipline."

Specification: "In that Private A—— B——, Co.——, —— U. S. Infantry, while on duty as a sentinel, did, through neglect, suffer Private C—— D——, Co. ——, —— U. S. Infantry, a prisoner under his charge, to escape.

"This at ——, on the —— of ——, 19—."

or,

Specification: "In that Private A—— B——, Co.——, —— U. S. Infantry, while on duty as a sentinel, did willfully suffer Private C—— D——, Co. ——, —— U. S. Infantry, a prisoner under his charge, to escape.

"This at ——, on the —— of ——, 19—."

(*d*) **Charge:** "Conduct to the prejudice of good order and military discipline."

Specification: "In that Private A—— B——, Co.——, —— U. S. Infantry, having received a lawful order from 1st Sergt. C—— D——, Co. ——, —— U. S. Infantry, the said sergeant being in the execution of his duty, to (*insert order*), did willfully disobey the same.

"This at ——, on the —— of ——, 19—."

(*If any person not a soldier*[1] *fraudulently enlist in the United States service, the charge and specification should read:*[2])

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[1] For case of fraudulent enlistment by a soldier, see page 140, form (g), *post;* and for definition of "fraudulent enlistment," see page 14, note 4, *ante.*

[2] See sec. 3 of the Act of July 27, 1892, page 114, note 2, *ante.*

(*e*) **Charge:** "Fraudulent enlistment, in violation of the 62d Article of War."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, did, at ——, on the —— of ——, 19—, being then a minor, fraudulently enlist as a soldier in the service of the United States by falsely representing himself to be over 21 years of age, to wit, —— years and —— months of age; and that he has at ——, since said enlistment, received pay and allowances thereunder."

or,

(*f*) *Specification:* "In that Private A—— B——, Co. ——, —— U. S. Infantry, did, at ——, on the—— of ——, 19—, fraudulently enlist as a soldier in the service of the United States, by falsely representing that he had never been discharged from the United States service by sentence of a military court and by deliberately and willfully concealing from the recruiting officer, ——, the fact of his dishonorable discharge from ——, on ——, pursuant to sentence of court-martial; and that he has at ——, since said enlistment, received pay and allowances thereunder."

(*or*) if a soldier enlists without a discharge from a prior enlistment.[1]

(*g*) *Specification:* In that Private A—— B——, Troop ——, —— U. S. Cavalry, *alias* Private C—— D——, Co. ——, —— U. S. Infantry, a soldier in the service of the United States, did, without a discharge from said regiment of cavalry, fraudulently enlist in Co. ——, —— U. S. Infantry, at ——, on the —— day of ——, 19—, under the name of C—— D——.

(*h*) **Charge:** "Manslaughter, to the prejudice of good order and military discipline, in violation of the 62d ticle of War."

ecification: "In that Private A—— B——, Co. ——, U. S. Infantry, did unlawfully, willfully and feloni-

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such cases it is not necessary to allege receipt of pay or allowance, as soldier being already in the service, his enlisting again without a discharge is punishable as fraudulent enlistment without regard to the act of —— 27, 1892. See Digest Opin. J. A. G., § 1418.

ously kill Private C—— D——, Co. ——, —— U. S. Infantry, by (*here insert manner of killing*).

"This at ——, on the —— of ——, 19—."

(*i*) **Charge:** "Assault (*or*, assault and battery)[1] with intent to kill, to the prejudice of good order and military discipline."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, did feloniously assault Sergeant —— ——, Co. ——, —— U. S. Infantry, by shooting at him with a pistol (*or* by stabbing him with a knife, *etc.*, *etc.*) with intent to kill.

"This at ——, on the —— of ——, 19—."

(*j*) **Charge:** "Burglary, to the prejudice of good order and military discipline."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, did, in the night-time, break into and enter the quarters of 1st Lieut. C—— D——, —— U. S. Cavalry, with intent to commit a felony, to wit: (*here describe the felony*).

"This at ——, about —— o'clock —. m. on the —— of ——, 19—."

(*k*) **Charge:** "Larceny, to the prejudice of good order and military discipline."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, did feloniously take, steal, and carry away ——, of the value of —— dollars ($——), the property of Corporal —— ——, Co. ——, —— U. S. Infantry.

"This at ——, on the —— of ——, 19—."

(*l*) **Charge:** "Embezzlement, as defined in section 5488, Revised Statutes of the United States, in violation of the 62d Article of War."

Specification: "In that —— ——, U. S. Army, being the officer in charge for the United States of ——, and, as such officer in charge of said ——, being a disbursing officer of the United States, and having intrusted to him large amounts of public money of the United States, did willfully and knowingly apply for a purpose not authorized by law a large sum of the said moneys so

[1] *If there be any unlawful touching of the person of another by the aggressor himself or any other substance put in motion by him, battery should be charged.*

intrusted to him, by willfully and knowingly causing the amount hereinafter named to be paid out of the said moneys which were subject to his order and control as such officer in charge of said ——, the account on which the same was paid being false, the amount paid not being due or owing from the United States to the party paid, or to anyone, and he, the said —— ——, well knowing this to be the case; the said account, the amount paid, and the payment being that designated by the following voucher (and the entries therein and the indorsements thereon), submitted by the said —— ——, with his accounts and marked 'Appropriation for ——.' Voucher No. ——, $——, dated ——, the said payment having been caused to be made on or about ——, by the said —— —— drawing and delivering a check, as such officer in charge of ——, by which the payment was ordered and directed to be made out of moneys of the United States under his control as such officer.

"This at ——, on or about the —— of ——, 19—."

(*m*) **Charge:** "Perjury,[1] to the prejudice of good order and military discipline."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, having been duly sworn, at his own request, as a witness in his own defense before a —— court-martial, convened at ——, by —— order No. ——, dated ——, 19—, for his trial, did willfully, falsely, and corruptly testify as follows:

"Question by judge-advocate: —— ——?

"Answer: —— ——.

"Which testimony was false in that (*specify in what respects*), and which testimony was known by him, the said A—— B——, to be false, was material to the issue then being tried, and was given with intent to deceive the court.

"This at ——, on the —— day of ——, 19—."

[1] Wharton says (Criminal Law, § 1259): "Perjury before courts-martial is by statute made indictable in most jurisdictions; but even when a statute does not apply, the weight of authority is that it is perjury at common law." It is a statutory crime, under sec. 5392, R. S. So that false swearing before a court-martial, if it possesses the other elements of perjury, is perjury, and can be *tried as such by* court-martial under the 62d A. W. The rules of *evidence in regard to perjury* will then apply. When any of the elements *of perjury are lacking* the offense will properly be charged as "false swearing;" *e. g., when the matter* is *not* material to the issue.

STATEMENT OF SERVICE.[1]

.....
(Surname.) (Christian name.)

.....
(Rank and organization.)

(*Statement of service required by paragraph 962, Army Regulations.*)

FORMER SERVICE.

Date of enlistment	Date of discharge.	Character given on discharge.

Date of present enlistment —— ——, 190—.

Date of confinement under present charges ——, 190 .

—— ——,

—— ——,

—— —— (Station.) *Commanding* ——.

—— —— (Date.)

SURGEON'S REPORT ON ALLEGED DESERTER.

FORT —— ——,

—— ——, 19—.

SIR: In compliance with par. 125, A. R., I have the honor to report that I have critically examined —— ——, an alleged deserter, and find him fit for service (*or*, unfit for service on account of ——).

—— ——,

To the *Surgeon.*

Post Adjutant.

---

[1] See page 64, par. 7, *ante*. When possible the name of the organizations or organizations in which the soldier formerly served should be given.

RECORD OF A GENERAL COURT-MARTIAL.[1]

SEC. I —FORM FOR RECORD.[2]

CASE 1.

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[1] See "Record of proceedings," page 62, *ante*. The record will be clear and legible, and, if practicable, without erasure or interlineation. Any erasure or interlineation made must be authenticated by the initials of the president or of the judge-advocate. In case the record is typewritten a copyable ribbon will be used.

[2] The pages of the record will be numbered at the bottom, and margins of 1 inch will be left at the top, bottom, and left side of each page.

[3] The index will refer to everything essential to the organization and *jurisdiction of the court* and the regularity of its proceedings. It will also *refer to the pages where each* witness was sworn and recalled, and the pages *where each document was introduced* and appended.

Proceedings[1] of a general court-martial which convened at ——, ——, pursuant to the following order:

(*Here insert a literal copy of the order appointing the court, and following it, copies of any orders modifying the detail.*)[2]

HEADQUARTERS DEPARTMENT OF ——,
——, ——, 19—.

SPECIAL ORDERS, }
No. —. }

A general court-martial is appointed to meet at ——, ——, at —— —. m., on —— ——, 19—, or as soon thereafter as practicable, for the trial of such persons as may be properly brought before it.

DETAIL FOR THE COURT.

Major —— ——, 5th Cavalry.
Captain —— ——, Coast Artillery Corps.
Captain —— ——, Medical Corps.
1st Lieutenant —— ——, 10th Infantry.
1st Lieutenant —— ——, 5th Cavalry.
2d Lieutenant —— ——, Coast Artillery Corps.
2d Lieutenant —— ——, 10th Infantry.
1st Lieutenant —— ——, 5th Cavalry, judge-advocate.

(*If less than thirteen members are detailed, the order will state:*)

A greater number of officers can not be assembled without manifest injury to the service.

(Page 1.)

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[1] "Every party tried by a general court-martial shall, upon demand thereof, made by himself or by any person in his behalf, be entitled to a copy of the proceedings and sentence of such court." (114th A. W.) Applications for copies under this article, will, when received by post or other commanders, be forwarded direct to the Judge-Advocate-General. (Par. 927, A. R.)

[2] Words inclosed in parentheses, ( ), or brackets, [ ], are simply explanatory, and will not be copied in the record.

(*In case travel is necessary, the following sentence will be added:*)

The journeys required in complying with this order are necessary for the public service.

By command of Brigadier General —— ——:

(Signed) —— ——,
Adjutant General.

FORT —— ——,
—— ——, 19—.

The court met pursuant to the foregoing order at —— o'clock —. m.

PRESENT.[1]

Major —— ——, 5th Cavalry.
Captain —— ——, Medical Corps.
1st Lieutenant —— ——, 10th Infantry.
1st Lieutenant —— ——, 5th Cavalry.
2d Lieutenant —— ——, Coast Artillery Corps.
1st Lieutenant —— ——, 5th Cavalry, judge-advocate.

ABSENT.

Captain —— ——, Coast Artillery Corps.
2d Lieutenant —— ——, 10th Infantry.

(*If the cause of absence is known, it will be recorded: if unknown, it will be so stated.*)[2]

(Page 2.)

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[1] In the record of the proceedings of a court-martial, at its organization for the trial of a case, the officers detailed as members and judge-advocate will be noted by name as present or absent. In the record of the proceedings of subsequent sessions in the same case, the following form of words will be used, subject to such modifications as the facts may require: "Present, all the members of the court and the judge-advocate." When the absence of an officer who has not qualified, or who has been relieved or excused as a member, has been accounted for, no further note will be made of it.

[2] It is the duty of a judge-advocate to ascertain, if possible, the cause of absence. If a member is absent by order, the number and date of order will be given if the order emanate from the convening or higher authority; but if absent by telegraphic authority, a post order, etc., a copy of the authority should be appended to the record; if absent sick, a surgeon's certificate of *sickness and inability to attend* will be furnished by the absent member, *and appended to the record.*

The court then proceeded to the trial of Private —— ——, ——th Company, Coast Artillery Corps, who, having been brought before the court, stated that he did not desire counsel; (*or*) introduced —— —— as counsel.

[REPORTER] [1]

—— —— was duly sworn as reporter.[2]

The order convening the court (and the order or orders modifying the detail, *if any*) was (*or* were) read to the accused, and he was asked if he objected to being tried by any member present named therein; to which he replied in the negative.

[CHALLENGES.]

(*or*) that he objected to —— —— on the following grounds:

(*Insert objections.*)

The challenged member stated:

(*Insert the statement of the challenged member, who should always be requested to respond to the challenge and inform the court upon its merits. Should the accused, after the statement, desire to put the challenged member upon his voir dire, the record should continue:*)

The accused having requested that the challenged member be sworn upon his *voir dire*,[3] —— —— was duly sworn by the judge-advocate, and testified as follows:[4]

(Page 3.)

[1] To facilitate use of form, subheads "reporter," "challenges," etc., are inserted and followed by marginal lines. To use form in case no reporter is employed, follow form to "reporter," and then omit as far as marginal line under "reporter" extends. In like manner omit when necessary for other subheads.

[2] The reporter must be sworn in each case. For form of oath, see page 31, par. 4, *ante*.

[3] For form of oath, see page 31, par. 6, *ante*.

[4] The form of examination should be similar to that given for witness for the defense, page 152, *post*. The accused should first ask his questions, and then the judge-advocate and court such as they may deem pertinent.

The challenged member, the accused, (his counsel,) (the reporter,) and judge-advocate then withdrew,[1] and the court was closed, and on being opened the president announced in their presence that the objection of the accused was not sustained[2] (*or*) that the objection was sustained. —— —— then withdrew.

The accused was asked if he objected to any other member present;[3] to which he replied in the negative, (*or*) that he objected to —— —— on the following grounds:

(*Insert objection in full and record as before.*)

The members of the court and the judge-advocate were then duly sworn.[4]

[INTERPRETER.]

(*If an interpreter is required, he should now be sworn.*)[5]

[DELAY.]

(*If delay is desired for cause known, application should now be made and the proceedings of the court recorded.*[6] *If no delay is requested, the record should continue:*)

The accused was then arraigned upon the following charges and specifications:[7]

Charge I: —— ——.

Specification 1st: —— ——.

Specification 2d: —— ——.

[1] See page 25, par. 7, *ante*.

[2] In case of a tie vote see page 22, note 3, *ante*.

[3] Only one member at a time can be challenged, and a record of the proceedings in each case must be made.

[4] Whenever the same court-martial tries more than one prisoner on separate and distinct charges, the court will be sworn at the commencement of each trial and separate proceedings in each case prepared. For forms of oaths see page 30, *ante*.

[5] For form of oaths see page 31, *ante*.

[6] See page 32, *ante*.

[7] The signature and rank of the officer preferring the charge is not a part of the charge and should not be copied into the record.

Charge II: —— ——.

[PLEA TO THE JURISDICTION, IN ABATEMENT OR IN BAR.]

To which the accused submitted the following special plea to the jurisdiction (*or* in abatement, *or* in bar of trial):[1]

(*or*)

To which the accused pleaded[2] as follows:

To the 1st specification, 1st charge, "Guilty;" (*or*) "Not guilty."

To the 2d specification, 1st charge, "Guilty:" (*or*) "Not guilty."

To the 1st charge, "Guilty;" (*or*) "Not guilty."

To the 1st specification, 2d charge, etc.

Sergeant John Jones, Co. ——, —— Infantry, a witness for the prosecution, was duly sworn, and testified as follows:

DIRECT EXAMINATION:

Questions by the judge-advocate:[3]

Q. Do you know the accused? If so, state who he is.

A. I do; Private —— ——, ——th Company, Coast Artillery.

(*The succeeding questions of the judge-advocate and their answers should follow in order.*)[4]

CROSS-EXAMINATION:

Questions by the accused:

Q. —— ——?

A. —— ——.

(*If the accused declines to cross-examine the witness the record should state:*)

The accused declined to cross-examine the witness.

(Page 5.)

[1] If a special plea is made, the plea, the reply of the judge-advocate, and the action of the court thereon will be fully stated; see page 33, par. 7, *ante*, and page 153, note 2, *post*.

[2] See page 33, par. 3, *ante*, as to admission of intention to desert.

[3] When considered desirable the first question may be as to the identity of the witness

[4] The record should set forth fully all the testimony introduced upon the trial, the oral portion as near as practicable in the precise words of the witness. If the court should decide to expunge any part, it will not be literally expunged or omitted from the record but will not be thereafter considered as part of the evidence.

REDIRECT EXAMINATION:

Questions by the judge-advocate:

Q. —— ——?

A. —— ——.

RECROSS-EXAMINATION:

Q. —— ——?

A. —— ——.

EXAMINATION BY THE COURT:

Q. —— ——?

A. —— ——.

[OBJECTION TO QUESTION.] [1]

Question by a member: ——?

To this question the accused (*or party objecting*) objected as follows:

(*Insert objection.*)

To which the member replied:

(*Insert reply.*)

The accused (his counsel,) (the reporter,) and judge-advocate withdrew and the court was closed, and on being opened the president announced in their presence that the objection was sustained.

(*or*) was not sustained.

(*In the latter case the record should continue:*)

The question was then repeated by the judge-advocate as a question of the court.

A. —— ——.

(*If the court considers it necessary to hear the testimony of the witness read or the witness desires to have certain testimony read for correction the record will show the fact and the corrections, if any.*) [2]

(Page 6.)

[1] If a question put by a member, is objected to by another member, the judge-advocate, or the accused, and the objection is sustained, it will be *recorded as a question by a member*, and *not* answered. If the objection is not sustained it will be *recorded as a question by the court*, repeated by the judge-advocate, and *must* be answered. If a question is objected to by anyone, at *any time* during the trial, the above method of recording the action of the *court will be followed.*

[2] *Should a witness be recalled* and again placed on the stand, he will be *reminded that he has been* sworn in the case and is still under oath.

(*At the close of the prosecution the record should continue:*)

The judge-advocate announced that the prosecution here rested.

(*If the court adjourns to meet another day the record should continue:*)

The court then, at —— o'clock — m., adjourned to meet at —— o'clock — m., on ——.

—— ——,
1st Lieut., 5th Cavalry,
Judge-Advocate.[1]

FORT —— ——,
—— ——, 19—.

The court met pursuant to adjournment, at —— o'clock — m.

PRESENT.[2]

All the members of the court and the judge-advocate.[3]

The accused, his counsel, and the reporter were also present.

(*If the proceedings of the previous day are required by the court to be read, the fact will be recorded in the following form:*)

The proceedings of —— were read[4] and approved. (*or*) corrected as follows:

(*In latter case, enumerate corrections, giving page and line on which they occur.*)

(Page 7.)

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[1] The judge-advocate should sign each day's proceedings. (Par. 988, A. R.)

[2] See page 146, note 1, *ante*.

[3] If any member is absent, if not already accounted for, add except —— (*giving cause of absence, if known*).

[4] The reading of previous proceedings will be dispensed with, unless for special reason considered necessary by the court. See page 63, par. 2, *ante*.

Corporal John Smith, Co. ——, —— Infantry, a witness for the defense, was duly sworn and testified as follows:

DIRECT EXAMINATION:

Question by the judge-advocate:[1] Do you know the accused? If so, state who he is.

A. —— ——.

Questions by the accused:

Q. —— ——?

A. —— ——.

(*The examination should be conducted as in case of a witness for the prosecution, the judge-advocate cross-examining, and the accused, if he so desires, reexamining the witness.*)

(*Should the accused wish to testify in his own behalf, the record will continue:*)[2]

The accused, at his own request, was duly sworn as a witness, and testified as follows:

Questions by the accused:

Q. —— ——?

A. —— ——.

(*The examination of the accused should be conducted in the same manner as that of any other witness.*)

(*If the accused has no other witness to call, the record should continue:*)

The accused had no further testimony to offer and no statement to make.

(*or*) having no further testimony to offer, made the following verbal statement in his defense.

(Page 8.)

[1] Though this is a witness for the defense, the judge-advocate will ask the preliminary question for the purpose of determining his identification of the accused. When considered desirable, the first question may be as to the identity of the witness.

[2] *Should the accused not* wish to testify in his own behalf the fact may *not be animadverted upon.*

(*or*) having no further testimony to offer, submitted a written statement in his defense, which was read to the court, and is hereto appended and marked A.[1]

(*or*) requested until —— o'clock —. m. to prepare his defense.

(*If the court takes a recess during the time asked for, the record will continue:*)

The court then took a recess until —— o'clock —. m.: at which hour the members of the court, the judge-advocate, the accused, his counsel, and the reporter resumed their seats.

(*Or, if the court has other business before it, the record may continue:*)

The court then proceeded to other business, and at —— o'clock —. m. resumed the trial of this case; at which hour, etc.

The accused submitted his defense, which was read to the court, and is hereto appended and marked B.[2]

The judge-advocate submitted the case without remark.

(*or*) replied as follows:[3]

(*Insert reply.*)

(*or*) submitted and read to the court a written reply, which is hereto appended and marked C.

The accused (his counsel,) (the reporter,) and judge-advocate then withdrew and the court was closed, and finds the accused, Private —— ——, ——th Company, Coast Artillery:

Of the 1st specification, 1st charge: "Guilty;" (*or*) "Not guilty."

(Page 9.)

[1] All documents and papers made part of the proceedings, or copies of them, will be appended to the record, in the order of their introduction, after the space left for the remarks of the reviewing authority, and marked in such a manner as to afford easy reference. It is not necessary to encumber a record by spreading upon it documents or other writings, or matter excluded by the court. The record should simply specify the character of the writings and the grounds upon which they were ruled out.

[2] The statement of the accused, or argument in his defense, and all pleas to the jurisdiction in bar of trial or in abatement, when in writing, should be signed by the accused, referred to in proceedings as having been submitted by him, and appended to the record, whether he is defended by counsel or not.

[3] *The judge-advocate* is entitled by usage to sum up the case and present *an argument at the* conclusion of the trial, even though the accused declines *to make argument* or statement.

Of the 2d specification, 1st charge: "Guilty, except the words '—— ——,' and of the excepted words Not guilty."

Of the first charge: "Guilty;" (*or*) "Not guilty;" (*or*) "Not guilty, but guilty of. etc., —— ——."

Of the 1st specification, 2d charge, etc.

[PREVIOUS CONVICTIONS WHEN ACCUSED IS FOUND GUILTY.]

(*If the accused is found guilty and the punishment is discretionary,*[1] *the record should continue:*)

The judge-advocate and accused were then recalled and the court opened, and the judge-advocate stated that he had no evidence of previous convictions to submit.

(*or*) read the evidence of —— previous convictions,[2] copies of which are hereto appended and marked D, E, etc.

(*If the accused has any statement to make in regard to his previous convictions, it will be recorded.*)

The accused (his counsel,) (the reporter,) and judge-advocate then withdrew and the court was closed, and sentences him, Private —— ——, ——th Company, Coast Artillery, —— ——.

[NO PREVIOUS CONVICTIONS, OR ACCUSED ACQUITTED.]

(*If the punishment is not discretionary, or the accused is acquitted, the record, after the findings are stated, should continue:*)

And the court does therefore sentence him, etc.

(*or*) does therefore acquit him, Private —— ——, ——th Company, Coast Artillery.

(Page 10.)

---

[1] See page 58, Sec. 2, *ante*.

[2] See "Previous convictions," page 47, *ante*. When the proof produced is the copy furnished to the company or other commander, in accordance *with par. 965, A. R.*, it will be returned to him and a copy of it attached to *the record, if the trial be by* general court-martial. (Par. 971, A. R.) The *copy should be bound with* the record, as an exhibit, by means of the mar*gin provided for the purpose*.

The judge-advocate was then recalled, and the court at —— —. m. proceeded to other business.
(*or*) adjourned until —— —. m., the —— inst.
(*or*) adjourned to meet at the call of the president.
(*or, on completion of the trial of the last case before the court*) adjourned *sine die*.

—— ——,
Major, 5th Cavalry,
President.

—— ——
1st Lieut., 5th Cavalry,
Judge-Advocate.[1]

(*At least two blank pages will be left after the adjournment, and before the exhibits, for the decision and orders of the reviewing authority.*)

FORM OF BRIEF.

(*The papers forming the complete record will be fastened together at the top, and the record folded in four folds, and briefed on the first fold as follows:*)[2]

—— ——,
Private, —th Co. Coast Artillery Corps.
Trial by general court-martial
at —— —— —— ——;
Commencing ——, 19—:
Ending ——, 19—.

President:
Major —— ——.
5th Cavalry.

Judge-Advocate:
1st Lieut. —— ——.
5th Cavalry.

(Page 11.)

[1] In case of the death or disability of the judge-advocate see par. 988, A. R.

[2] When the record is completed, the judge-advocate will forward it without delay to the convening authority as an inclosure to the indorsement of the judge-advocate returning the original charges. (Par. 990, A. R.) See *also page 65, par. 3, and page 74, par. 1, ante.*

SEC. II.—FORM FOR REVISION OF RECORD.[1]

FORT ——, ——,
—— ——, 190—.

The court reconvened at —— o'clock —. m., pursuant to the following order:

(*Insert copy of order.*)

(*or*) pursuant to the following indorsements:

(*Insert copies of all indorsements.*)

PRESENT.[2]

—— ——.

ABSENT.

(*Insert names of absentees, and state cause of absence, if known.*)

The judge-advocate read to the court the foregoing order.

(*or*) the foregoing indorsement of the convening authority.[3]

The judge-advocate then withdrew, and the court was closed and revokes its former findings and sentence, and finds the accused, etc.

(*or*) revokes its former sentence, and sentences the accused, etc.

(*or*) respectfully adheres to its former findings and sentence.

(*or*) amends the record by, etc.[4]

(Page 12.)

[1] See "Revision of record," page 64, *ante*. The court is usually reconvened by indorsement on the original record, returning it to the president of the court with the directions of the convening authority.

[2] If the findings and sentence are to be considered, all the members who voted on them should, if possible, be present. At least five members of the court, who acted upon the trial, must, and the judge-advocate should, be present at a revision; but it is in general neither necessary nor desirable that the accused should be present.

[3] The judge-advocate will also read any other indorsements there may be connected with the proceedings in revision.

[4] *See page 64, par. 2, ante.*

The judge-advocate was then recalled and the court at —— —. m., etc.

—— ——,
Major, 5th Cavalry,
President.

——— ———,
1st Lieut., 5th Cavalry,
Judge-Advocate.

(*The record of revision will be appended to the original proceedings, following them immediately, before the exhibits, and the whole indorsed by the president of the court and forwarded to the convening authority.*)

RECORD OF A SUMMARY COURT.

SEC. I.—FORM FOR RECORD.[1]

(Surname.) (Christian name.)

(Rank.) Co. ——, (Regiment or corps.)

Number of case ——.

RECORD OF SUMMARY COURT.

Trial of the man named above by court appointed by —— Orders, No. ——, Headquarters ——, ——, 190—.

FORMER SERVICE.

Date of enlistment.	Date of discharge.	Character given on discharge.

Date of present enlistment, —— ——, 190—.

Rate of pay per month, ——.

In arrest or confinement under present charges since —— ——, 190—.

Dates and serial numbers of previous convictions with sentences within one year preceding commission of offense and during current enlistment: —— ——.

[1] Blank forms for summary court record and for monthly report of cases tried (page 159, *post*), size 3¾ by 8½ inches, will be furnished by The Adjutant-General of the Army. The form for summary court record is also intended for use in furnishing copies of the record, the same to be certified to be "*a true copy*" by the commanding officer or adjutant.

Charge: Violation —— Article of War.
Specification: In that he did —— ——.
Witnesses:

—— ——.
—— ——.
—— ——.

—— ——,
Officer preferring charges.

I hereby consent to trial by summary court on these charges.

—— ——,
—— *Co.* ——.

Respectfully referred to the summary court for trial.
By order of —— ——:

—— ——,
Adjutant.

FINDINGS:
Of specification : —— ——.
Of charge : —— ——.
Sentence: —— ——.
Number of previous convictions considered, —— ——.

—— ——,
—— ——,
Summary court.

Approved —— ——, 190—.

—— ——,
—— ——,
Commanding Officer.

SEC. II.—INSTRUCTIONS.

(On back of form.)

The charges and data, as called for on pages 1 and 2 of this form, will be prepared in duplicate by the officer preferring the charges—one copy for completion as the record of trial, and the other as the copy for the company records, the latter to be certified to be "a true copy" by the commanding officer or adjutant.

Each case will be given a serial number in the order *of trial, by the trial officer*, and bound in its numerical *order in a book* of convenient size, each case, when completed, being added to the book by pasting or other

method. Paper binding will be sufficient, a good quality of tough paper being used for this purpose.

Charges will be accompanied by the certified copies of previous convictions[1] on file with the company records. If the charges be referred to the summary court for trial, the copies will be returned to the company records immediately after trial. If the charges be referred to a garrison or regimental court-martial (this form being used as a charge sheet), the copies of previous convictions will accompany them, but will be returned to the company records immediately after trial. When the copies of previous convictions accompany charges referred to a general court-martial for trial they will be returned to the company records immediately after trial, and copies thereof, made and certified by the judge-advocate, will be attached to the record of trial.

If the only officer present with command sits as summary court no approval of sentence is required, but he will sign the sentence as such officer and affix the date of signature.[2]

This form is printed in copying ink, and when filled in on the typewriter a copyable ribbon will be used.

MONTHLY REPORT OF SUMMARY COURT CASES.

FORM FOR REPORT.

(Surname.) (Christian name.)

(Rank.), Co., (Regiment or corps.)

REPORT OF TRIALS BY SUMMARY COURT.

At —— ——.
During the month of ——, 190—.
Number of case ——.
Charge : Violation —— Article of War.
Synopsis of specification or of specifications: —— ——.

---

[1] See page 48, par. 2, and page 78, par. 11, ante.
[2] Par. 966, A. R.

Finding : —— ——.

Number of previous convictions considered ——.

Rate of pay per month ——.

Consent in writing to trial. ("Yes" or "No") ——.

Sentence: (If mitigated, give sentence as mitigated only. Signature of trial officer not to be copied.)

Date of approval or, if there be no approval, of sentence, —— ——, 190—.

INSTRUCTIONS.

This report covers one case only and, with other reports covering the cases tried during the month, will be transmitted to department headquarters on the last day of the month for file (after examination) in the office of the judge-advocate of the department in alphabetical order under the name of party tried. At recruit depots and recruiting stations and other places exempted from the jurisdiction of commanders of territorial divisions and departments the reports will be forwarded directly to The Adjutant-General of the Army. After having been retained on file for two years the reports may be destroyed.

RECORD OF A GARRISON COURT-MARTIAL.[1]

SEC. I.—FORM FOR RECORD.

CASE ——.

Proceedings of a garrison court-martial convened at ——, pursuant to the following order:

FORT —— ——,
—— ——, 19—.

ORDERS, }
No. ——. }

A garrison court-martial will convene at this post at —— o'clock a. m., on —— ——, 19—, or as soon there-

[1] The form of record for a garrison court-martial differs from that for a general court-martial only in respect to the form of the order appointing the court. *The form here given is that for a case in which a plea of "Guilty" is entered; if the prisoner pleads "Not guilty," or makes a special plea, the form for record of a general court will be followed.*

after as practicable, for the trial of (such persons as have refused to consent in writing to trial by summary court).[1]

DETAIL FOR THE COURT.

Captain —— ——.
1st Lieutenant —— ——.
2d Lieutenant —— ——.
2d Lieutenant —— ——, judge-advocate.
By order of —— ——:

(Signed) —— ——,
1st Lieutenant ——,
Adjutant.

FORT —— ——,
—— ——, 19—.

The court met, pursuant to the foregoing order, at —— o'clock —. m.

PRESENT.

Captain —— ——.
1st Lieutenant —— ——.
2d Lieutenant —— ——.
2d Lieutenant —— ——, judge-advocate.

The court then proceeded to the trial of Private —— ——, Company ——, —— Infantry, who, having refused to consent in writing to trial by summary court, was brought before the court, and having heard the order convening it read, was asked if he had any objection to being tried by any member named therein; to which he replied in the negative.

The members of the court and the judge-advocate were then duly sworn, and the accused was arraigned upon the following charge and specification:

Charge:[2] —— ——.
Specification: —— ——.
To which the prisoner pleaded:
To the specification, "Guilty."
To the charge, "Guilty."

[1] See page 82, par. 6, *ante.*

[2] The signature of the officer preferring the charge will not be entered in the record.

(*In case testimony is taken, it is not recorded.*[1])

The judge-advocate announced that the prosecution here rested.

The prisoner stated that he had no testimony to offer or statement[2] to make.

The accused and judge-advocate then withdrew, and the court was closed and finds the accused, Private —— ——, Company ——, —— Infantry.

Of the specification, "Guilty."

Of the charge, "Guilty."

The judge-advocate and the accused were then recalled and the court opened; and the judge-advocate stated that he had no evidence of previous convictions to submit. (*or*) read the evidence of —— previous convictions.

The accused and judge-advocate then withdrew, and the court was closed and sentences him, Private —— ——, Company ——, —— Infantry, etc.

The judge-advocate was then recalled and the court at —— —. m., etc.

—— ——,
Captain ——,
President.

—— ——,
2d Lieut. ——,
Judge-Advocate.

(*A sine die adjournment will be added to the last case before the court, and the record of each case folded and indorsed in the same manner as that for a general court-martial.*)

---

[1] Par 988, A. R. The record must give the names of witnesses examined, both for the prosecution and defense, and will state the fact as to their having been duly sworn. If the accused be sworn as a witness the record should show that it was at his own request.

[2] Statements and arguments will not be reduced to writing in the record.

SEC. II.—REMARKS ON THE RECORD.

1. The decision and orders of the post commander, properly dated and over his official signature, will follow immediately after the sentence, *adjournment*, or other final proceeding of the court in the case.

2. "The complete proceedings of a garrison or regimental court, except when convened at recruit depots and recruiting stations and other places exempted from the jurisdiction of commanders of territorial divisions and departments by paragraph 187, will be transmitted without delay by the post or regimental commander to department headquarters. Where such courts were convened at recruit depots, recruiting stations, and other exempted places, the reports and records of such courts will be forwarded directly to The Adjutant General of the Army." [1]

RECORD OF A REGIMENTAL COURT-MARTIAL.[2]

CASE ——.

Proceedings of a regimental court-martial convened at —— ——, pursuant to the following order:

FORT —— ——,
——, ——, 19—.

ORDERS, }
NO. ——. }

A regimental court-martial will convene at this post at —— o'clock a. m., on ——, ——, 19—, or as soon thereafter as practicable, for the trial of (such persons as have refused to consent in writing to trial by summary court).[3]

DETAIL FOR THE COURT.[4]

(*Complete record as in case of garrison court-martial.*)

---

[1] Par. 991, A. R.

[2] The form of record for a regimental court differs from that for a garrison or a general court only in respect to the order convening the court.

[3] See page 83, par. 3, *ante*.

[4] See page 83, par. 2, and page 106, note 1, *ante*.

CASE NO. ——.

PROCEEDINGS OF A RETIRING BOARD.

Proceedings of an Army retiring board convened at —— by virtue of the following orders:

SPECIAL ORDERS, No. ——. } WAR DEPARTMENT. WASHINGTON, ——, *190–*.

EXTRACT.

* * * * *

10. Under instructions from the President, and in accordance with section 1246, Revised Statutes, an army retiring board is appointed to meet at ——, ——, from time to time, at the call of the president of the board, for the examination of such officers as may be ordered before it.

DETAIL FOR THE BOARD.

Colonel —— ——, — Infantry.
Lieutenant Colonel —— ——, adjutant general.
Major —— ——, Medical Corps.
Major —— ——, — Infantry.
First Lieutenant —— ——, Medical Corps.
First Lieutenant —— ——, — Infantry, recorder.

Such journeys as it may be necessary for the members and recorder of the board to make in attending its sessions and returning to their proper stations are necessary for the public service.

* * * * *

BY ORDER OF THE SECRETARY OF WAR:

—— ——,
Major General, Chief of Staff.

OFFICIAL:

—— ——,
Adjutant General.

——, ——, 19—.

The board met pursuant to the foregoing order at 11 o'clock a. m.

PRESENT.

Colonel —— ——, — Infantry.
Lieutenant Colonel —— ——, adjutant general.
Major —— ——, Medical Corps.
Major —— ——, —, Infantry.
1st Lieutenant —— ——, Medical Corps.
1st Lieutenant —— ——, — Infantry, recorder.

Captain —— ——, ——, appeared before the board pursuant to par. ——, Special Orders No. ——, War Department, dated ——, 19—, and stated that he did not desire counsel; (*or*, introduced —— —— as counsel.)

The order convening the board was then read, and Captain —— —— was asked if he had any objection to offer to any member present; to which he replied in the negative.

(*or*) that he objected to —— —— on the following grounds:

(*Insert objections.*)

The challenged member stated.

(*Insert the statement of the challenged member, who should be requested to respond to the challenge and inform the board upon its merits. Should the officer before the board for examination desire to put the challenged member on his voir dire, the record should continue:*)

Captain —— ——, having requested that the challenged member be sworn[1] on his *voir dire*, —— —— was duly sworn by the recorder, and testified as follows:

Question by Captain —— ——:

* * * * *

The board was then closed, and, on being opened, its decision was announced that the objection was not sustained, (*or*) that the objection was sustained. (*In the*

[1] For form of oath see page 31, ante.

latter case the record should state that the challenged member then withdrew.)

Captain —— —— was then asked whether he objected to any other member; to which, etc., as before.[1]

The members of the board and the recorder[2] were then duly sworn.

(*If the officer desires to be retired, the record will continue:*)

Captain —— —— was then asked whether he desired to be retired, and answered in the affirmative. He was then duly sworn as a witness, and testified as follows:

Question by the recorder (*or* by the board):

Q. Please state the nature of your disability and its cause, and how long you have suffered from it?

A. (*The officer can here make an oral statement or submit a written one. If a written statement is submitted the record will state:*)

The witness submitted a written statement, which was read to the board, and is hereto attached marked "A."

Q. Is the statement submitted by you correct?

A. Yes.

(*The board may then ask further questions.*)

Q. Do you desire to make any further statement?

A. ——.

(*When the officer objects to retirement, he will not be examined at this stage of the proceedings, but may introduce evidence or make a statement, as hereinafter indicated.*)

---

[1] Five being, under sec. 1246, R. S., the minimum number of members of a retiring board, it must, when reduced below that number by challenge, or if the board is left without the proportion of medical officers required by said section, adjourn and report the facts to the convening authority. When the board again meets the officer being examined will be accorded the right of challenge as before.

[2] If there be a reporter, he will also be sworn. For form of oath see page 31, *ante*.

Major —— ——, surgeon, a member of the board, was then duly sworn, and testified as follows:

Q. Please submit to the board the result of your examination of Captain —— ——.

The witness submitted a written report signed by himself and Assistant Surgeon —— ——, also a member of the board, which was read to the board and is attached, marked "B."

Q. From what cause does Captain —— ——'s disability proceed?

A. ——.

Q. Is the disability permanent?

A. ——.

Q. Is Captain ——'s disability such as to incapacitate him for active service?

A. ——.

* * * * *

(*The examination of the witness should be conducted so as to bring out all material facts on the lines indicated.*)

Captain —— —— stated that he had no question to ask, (*or*) asked the following questions:

* * * * *

(*The other medical member of the board should then be similarly interrogated.*)

The recorder then submitted certain papers referred to the board from the Office of The Adjutant General of the Army, which were read to the board, and are attached, marked ——.

Captain —— —— had no further evidence to submit nor statement to make. (*When there is such evidence or statement, the record will duly set it forth.*)

The board was then closed for deliberation, and, having maturely considered the case, finds that Captain —— —— is incapacitated for active service and that the cause of said incapacity is ——. And the board further

finds that said incapacity is (*or* is not) an incident of service.

The board then adjourned.[1]

——— ———,
———,
——— ———, *President of the Board.*[2]
———,
Recorder.

FORMS FOR SENTENCES.

In sentences imposing a loss of rank or files upon an officer the court may fix a place on the army list where the name of the accused will be placed as a result of the sentence, as, for instance, at the foot of the list of first lieutenants of infantry, or the court may mention the number of files to be lost, as, for instance, to lose ten files in military rank. In this case the court should not undertake to state where on the army list the name of the accused will appear.

Form 1. *Reduction:* * * * "to be reduced to the ranks."[3]

[1] (*Or when the board wishes to hear the record read:*)

The board then adjourned to meet —— at —— o'clock —. m.

——— ———,
———,
Recorder.

SECOND DAY'S PROCEEDINGS.

———, ———, 19—.

The board met pursuant to adjournment.
Present: All the members and the recorder.
The foregoing proceedings were then read and approved.
The board then adjourned.

——— ———,
———,
——— ———, *President of the Board.*
———,
Recorder.

[2] It is not necessary that the proceedings should be authenticated by the signatures of all the members of the board.

[3] *See pages 59 and 60,* and page 79, par. 13, *ante.*

Form 2. *Confinement:* * * * "to be confined at hard labor,[1] under charge of the post guard, for ——(—) days."

Form 3. *Forfeiture:* * * * "to forfeit —— (—) dollars of his pay,[2] now due or to become due."[3]

Form 4. *Confinement and forfeiture:* * * * "to be confined at hard labor, under charge of the post guard, for —— (—) months, and to forfeit —— (—) dollars per month for the same period."

Form 5. *Dishonorable discharge and forfeiture of pay and allowances:* * * * "to be dishonorably discharged the service of the United States, forfeiting all pay and allowances due him."

Form 6. *Dishonorable discharge, forfeiture of pay and allowances, and confinement:* * * * "to be dishonorably discharged the service of the United States, forfeiting all pay and allowances due him, and to be confined at hard labor at such post (*or*, in such penitentiary) (*or*, at such place) as the reviewing authority may direct, for —— (—) years."

SUMMONS FOR MILITARY WITNESS.[4]

——, ——, 19—

To ——, ——.

You are hereby summoned to appear on the —— day of ——, 19—, at —— o'clock —. m., before a general court-martial, convened at ——, by Special Orders,

---

[1] Unless *hard labor* be imposed by a sentence it can not be required of the prisoner.

[2] *Detention* of pay is no longer authorized; and under the acts of February 12, 1895 (28 Stat. L., 655), and March 16, 1896 (28 Stat. L., 60), pay can no longer be retained.

[3] By adding the words "now due or to become due" the pay rolls will generally be simplified, by permitting all of the forfeiture to be collected at *the next payment.*

[4] *See par. 11, page 38, ante.*

No. ——, Headquarters —— ——, dated ——, 19—, as a witness for the —— in the case of —— ——.

—— ——,

—— ——,

Judge-Advocate of the Court-Martial.

SUBPŒNA[1] FOR CIVILIAN WITNESS.

UNITED STATES
vs.
—— ——. } *Subpœna.*

The President of the United States, to —— ——, greeting:

You are hereby summoned and required to be and appear in person on the —— day of ——, 19—, at —— o'clock —. m., before a general court-martial of the United States, convened at —— ——, by Special Orders, No. ——, Headquarters —— ——, dated —— ——, 19—, then and there to testify and give evidence as a witness for the —— in the above-named case. And have you then and there this precept.

Dated at ——, this —— day of ——, 19—.

—— ——,

—— ——,

Judge-Advocate of the Court-Martial.

SUBPŒNA[1] DUCES TECUM.

(*Civilian witness.*)

UNITED STATES
vs.
—— ——. } *Subpœna.*

The President of the United States, to —— ——, greeting:

You are hereby summoned and required to be and appear in person on the —— day of ——, 19—, at —— o'clock —. m., before a general court-martial of the United States, convened at —— ——, by Special Orders, No. ——, Headquarters —— ——, dated —— ——, 19—, *then and there* to testify and give evidence as a witness

[1] *Fees must be tendered or paid under act of March 2, 1901, page 129, note. See also par. 1, page 43 ante.*

for the —— in the above-named case; and you are hereby required to bring with you, to be used in evidence in said case, the following-described documents, to wit: —— ——. And have you then and there this precept.

Dated at ——, this —— day of ——, 19—.

—— ——,

—— ——,

Judge-Advocate of the Court-Martial.

SUBPŒNA FOR CIVILIAN WITNESS.

(*For deposition.*)

UNITED STATES
vs.
—— ——. } *Subpœna.*

The President of the United States, to —— —— greeting:

You are hereby summoned and required to be and appear in person on the —— day of ——, 19—, at —— o'clock —, m., before —— at —— ——, detailed to take your deposition for use before a general court-martial of the United States, convened at —— ——, by Special Orders, No. ——, Headquarters —— ——, dated —— ——, 19—, then and there to testify and give evidence as a witness for the —— in the above-named case. And have you then and there this precept.

Dated at ——, this —— day of ——, 19—.

—— ——,

—— ——,

Judge-Advocate of the Court-Martial.

RETURN OF SERVICE.

(*Indorsement of preceding writs.*)[1]

UNITED STATES
vs.
—— ——.

—— ——,

—— ——, 19—.

I certify that I made service of the within subpœna on —— ——, the witness named therein, by personally

[1] *On the back of each form of writ are forms for both certificate and affidavit.*

delivering to him in person a duplicate of the same at ——, on the —— day of ——, 19—.

—— ——.

—— ——, } ss.
—— ——, }

—— ——, being duly sworn, on his oath states that the foregoing certificate is true.

—— ——.

Subscribed and sworn to this —— day of ——, 19—, before me.[1]

—— ——,
—— ——.

WARRANT OF ATTACHMENT.

UNITED STATES } *vs.* —— ——. }

The President of the United States, to —— —— greeting:

WHEREAS, —— ——, of —— ——, was on the —— day of ——, 19—, at ——, duly subpœnaed to appear and attend at——, ——, on the —— day of ——, at —— o'clock —. m., before a general court-martial duly convened by Special Orders, No. ——, dated Headquarters Department of ——, —— ——, 19—, to testify on the part of the —— in the above-entitled case; and whereas he has failed to appear and attend before said general court-martial to testify as by said subpœna required, and whereas he is a necessary and material witness in behalf of the —— in the above-entitled case.

Now, therefore, by virtue of the power vested in me, the undersigned, as judge-advocate of said general court-martial, by section 1202 of the Revised Statutes of the United States, you are hereby commanded and empowered to apprehend and attach the said —— ——, wherever he may be found within the —— of ——,[2] and

[1] After service, as above indicated, the original subpœna should be at once *returned to the judge-advocate* of the court; if the witness can not be found, *the judge-advocate should* be so informed.

[2] *State, Territory, or District* where the court sits.

forthwith bring him before the said general court-martial assembled at —— ——, to testify as required by said subpœna.

—— ——,
—— ——,
Judge-Advocate of said General Court-Martial.

Dated —— ——, —— ——, 19—.

INTERROGATORIES AND DEPOSITION.[1]

INTERROGATORIES.

THE UNITED STATES
vs.
—— ——.

The following interrogatories and cross-interrogatories to be propounded under the 91st Article of War, to —— ——, stationed (*or* residing)[2] at —— ——, a witness for the prosecution (*or* defense)[2] in the above-entitled case now pending and to be tried before the general court martial convened at —— ——, by paragraph ——, Special Orders No. ——, Headquarters Department of ——, dated —— —, 19—, are { accepted by the court in open session, / agreed upon by both parties in advance of the assembling of the court and subject to exceptions when read in court } the —— having been given reasonable opportunity to submit cross-interrogatories [3] and are respectfully forwarded to the convening authority with the request that some suitable officer may be designated to take, or cause to be taken, the deposition of said witness thereon:

First interrogatory: Are you in the military service of the United States? If yea, what is your full name, rank,

---

[1] See page 40, *ante*.

[2] Erase the word inappropriate to the case. With the consent of the opposite party the deposition of a witness residing *within* the State, Territory, or District in which the court sits may be taken and read in evidence. A written stipulation signed by both parties should, in such a case, be attached to this paper before it is signed.

[3] *Erase the line* inappropriate to the case.

organization, and station? If nay, what is your full name, occupation, and residence?

Second interrogatory: Do you know the accused, a —— in —— ——? If yea, how long have you known him?

Third interrogatory: —— ——?

Etc.

First cross-interrogatory: —— ——?

Etc.

First interrogatory by the Court: —— ——?

Etc.

Dated at —— ——, this —— day of ——, 19—.

—— ——, —— ——,

—— ——, —— ——,

Judge Advocate. *President.*[1]

HEADQUARTERS DEPARTMENT OF ——.

—— ——, 19—.

—— ——, stationed (*or* residing)[2] at —— ——, is hereby designated to take, or cause to be taken, the deposition of the said —— ——, a witness on the part of the —— in the case of the United States against —— ——, now pending before a general court-martial at —— ——. The deposition, when taken, to be sent by him to —— ——, the president of said court at —— ——.

By command of —— General ——.

—— ——,

Adjutant General.

DEPOSITION.

—— ——, the witness above named, having been first duly sworn by me, —— ——, a[3] ——, stationed (*or*

[1] If taken in advance of the assembling of the court, the interrogatories should be signed by the judge-advocate and the accused instead of the president and judge-advocate.

[2] Erase the word inappropriate to the case.

[3] Insert official character: as "Trial Officer Summary Court," "Notary Public," etc.

residing)[1] at —— ——, doth depose and say for full answers to the foregoing interrogatories, as follows:

To the first interrogatory: —— ——.

Etc. —— ——.

(Signature of witness.)

Subscribed and sworn to before me this —— day of ——, 19—.

—— ——,[2]

——.

I, —— ——, the officer designated to cause the deposition of the said —— —— to be taken on the foregoing interrogatories and cross-interrogatories, do certify that it was duly made and taken under oath.

—— ——,[3]

——.

ACCOUNT OF CIVILIAN WITNESS[4] NOT IN GOVERNMENT EMPLOY.

Form 13A—Pay Department.

Voucher No. ——. Pay, 190—.

The United States to —— ——, Civilian witness, Dr.

	Dollars.	Cts.
From ——, 190—, to ——, 190 :		
For mileage from —— to —— and return, being —— miles, at five cents per mile		
For allowance while in attendance on said court, from ——, 190—. to ——, 190—, as per certificate of Judge-Advocate hereon, —— days, at $— per day		
Total		

[1] Erase the word inappropriate to the case.

[2] The jurat to be signed by the officer administering the oath, who will add his official designation. (See page 40, par. 4, *ante*.) If the oath is administered by a Notary Public, his seal will be affixed to the deposition.

[3] This certificate will only be made where the officer has *caused* the deposition to be taken; where the officer himself administers the oath it is superfluous.

[4] The forms for "Summons for a military witness," for "Subpœnas for a civilian witness," for a "Warrant of attachment," and for a deposition are obtained from The Adjutant-General. The forms for accounts of civilian witnesses and of reporters are obtained from the Paymaster-General.

(Certification and account to be completely filled in by Judge-Advocate, or before signature by Judge-Advocate, without alteration or erasure thereafter.)

I certify that —— ——, a civilian not in Government employ, has been in attendance as a material witness from ——, 190—, to ——, 190—, inclusive, before a —— court-martial, duly convened at this place, and that he was duly summoned thereto from —— and was not furnished transportation by the Government for any portion of the journey.

(NOT TO BE SIGNED IN DUPLICATE.)

Place, ——. —— ——,

Date, ——. —— ——,

Judge-Advocate.[1]

Paid by Check No. ——, on ——, dated ——, 190—, for $——.

(To be completely filled in before signature by payee without alteration or erasure thereafter.)

Received ——, 190—, of ——, Paymaster, U. S. Army, *in cash* —— $\frac{00}{100}$ dollars, in full of above account.

(NOT TO BE SIGNED IN DUPLICATE.)

—— ——, *Witness.*

(The claimant will not sign the above receipt except when the payment is made in cash.)

ACCOUNT OF CIVILIAN WITNESS (BY DEPOSITION) NOT IN GOVERNMENT EMPLOY.

Form 13C—Pay Department.

Voucher No. ——. Pay, 190—

The United States, to —— ——, *Dr.*

	Dollars.	Cts.
From ——, 190—, to ——, 190—:		
For mileage from —— to —— and return, being —— miles, at five cents per mile		
For allowance while in attendance, giving deposition for use before said court, from ——, 190—, to ——, 190—, as per certificate hereon, —— days, at $—— per day		
Total		

[1] *If the witness be summoned for attendance before a summary court, the summary court officer will make the necessary certificate.* (Digest Opin. *J. A. G., sec. 2406.*)

(Certification and account to be completely filled in by officer, or before signature by officer, without alteration or erasure thereafter.)

I certify that —— ——, a civilian not in Government employ, has been in attendance giving deposition for use of a court-martial convened under attached orders from ——, 190—, to ——, 190—, inclusive, and that he was duly summoned thereto from ——, and was not furnished transportation by the Government for any portion of the journey.

(NOT TO BE SIGNED IN DUPLICATE.)

Place, ——. —— ——,
Date, ——. —— ——,
Judge-Advocate or other commissioned officer.

Paid by Check No. ——, on ——, dated ——, 190—, for $——.

(To be completely filled in before signature by payee without alteration or erasure thereafter.)

Received ——, 190—, of ——, Paymaster, U. S. Army, *in cash* —— $\frac{}{100}$ dollars, in full of above account.

(NOT TO BE SIGNED IN DUPLICATE.)

—— ——, *Witness.*

(The claimant will not sign the above receipt except when the payment is made in cash.)

NOTES ON FORMS 13A AND 13C.

The Paymaster is, under paragraphs 999 to 1003, Army Regulations, 1908, governed by the following rules in the treatment of voucher for travel expenses of civilian witnesses before military courts:

1. The voucher must be accompanied by authenticated copy of the order convening the court or appointing summary court.

2. The certificate of the judge-advocate or summary court officer (on face of voucher) is required in all cases.

3. A civilian not in Government employ, duly summoned *to appear* as a witness before a military court,

or at a place where his deposition is to be taken for use before such court, will receive $1.50 a day for each day of actual attendance for such purpose, and 5 cents a mile from place of residence to place of trial or taking deposition, and return, except as follows:

Porto Rico and Cuba, $1.50 a day, 15 cents a mile for necessary travel by stage or private conveyance and 10 cents by railway or steamship line.

Alaska, east of one hundred and forty-first degree west longitude, $2 a day and 10 cents a mile; west of that degree, $4 a day and 15 cents a mile.

Montana, Wyoming, Colorado, New Mexico, Arizona, Utah, Idaho, Washington, Oregon, Nevada, California, $3 a day, 15 cents a mile for necessary travel by stage or private conveyance, 5 cents by railway or steamship line, and *$3 a day for the time necessarily occupied in such travel.* (See A. R., 1000, amended by G. O. 128, 1908. Also R. S., 848; sec. 30, act June 6, 1900, 31 Stat., 332; act Mar. 2, 1901, 31 Stat., 954; act June 13, 1902, 32 Stat., 35; Regs. Atty. Gen., July 21, 1902; act May 27, 1908, Public 141.)

A retired army officer is a civilian not in Government employ in contemplation of Army Regulation 1000. (10 Comp., 51.)

Civilian witnesses, not in Government employ, summoned to attend courts-martial in the Philippine Islands, are entitled to the per diem and mileage allowed witnesses in attendance upon United States courts, i. e., $1.50 per day for each day in attendance on the court, and 5 cents per mile for the distance traveled to and from the court. If furnished with transportation by the Government, 42.858 per cent of the 5 cents per mile will be deducted as cost of transportation furnished and 57.142 per cent allowed for subsistence and other expenses of the witness.

An employee of the civil government of the Philippine Islands, paid from insular funds, is not in the employ of the Government within the meaning of Army Regulation 999.

In case a witness duly subpœnaed before a general court-martial refuses to appear or qualify as a witness or to testify or produce documentary evidence as required by law, he will at once be tendered or paid by the nearest paymaster these fees and mileage and will thereupon be again called upon to comply with the requirements of law. Civilian witnesses will be paid by the Pay Department. (A. R., 1001.)

4. The certificate of the judge-advocate will be evidence of the fact and period of attendance and place from which summoned, and will be made on the voucher.

5. Upon execution of the certificate the witness will be paid upon his discharge from attendance, without awaiting performance of return travel. The charges for return journeys will be made upon the basis of the actual charges allowed for travel to the court.

No other items will be allowed.

6. Travel must be estimated by the shortest usually traveled route—by established lines of railroad, stage, or steamer—the time occupied to be determined by the official schedules, reasonable allowance being made for unavoidable detention.

7. Whenever needed, judge-advocates can procure blank accounts for civilian witnesses from any army paymaster or the Paymaster-General's office. The accounts may then be made out upon the witness's discharge from attendance. If no paymaster be present at the place where the court sits, the accounts, authenticated as above directed, may be transmitted to any paymaster with confidence that the witness will receive his pay without unnecessary delay.

8. Accounts of citizen witnesses are not transferable. (See Circular 13, A. G. O., 1895.)

9. Signature of witnesses when signed by mark must be witnessed.

ACCOUNT OF CIVILIAN WITNESS IN GOVERNMENT EMPLOY.

Form 13B—Pay Department.

Voucher No. ——. Pay, 190—.

The United States, to —— ——, Civilian witness, Dr.

From ——, 190—, to ——, 190—:		
For actual cost of travel from —— to —— and return, as per memorandum attached		
For actual cost of meals and rooms while traveling to and from said court between above dates, inclusive, —— days		
For actual cost of meals and rooms while in attendance on said court from ——, 190—, to ——, 190—, as per certificate of the Judge-Advocate hereon, —— days (see note 7, *post*)		
Total		

I solemnly swear that the above account is correct; that I have not been furnished with Government transportation for any part of the journey for which travel fare is charged; and that the journey was performed without unnecessary or avoidable delay.

—— ——, *Witness.*

SWORN to and subscribed before me at ——, on this —— day of ——, 190—.

—— ——,

—— ——,

Judge-Advocate.

Paid by Check No. ——, on ——, dated ——, 190—, for $——.

(To be completely filled in before signature by payee without alteration or erasure thereafter.)

Received ——, 190—, of ——, Paymaster, U. S. Army, in cash —— $\frac{00}{100}$ dollars, in full of above account.

(Not to be signed in duplicate.)

—— ——, *Witness.*

(The claimant will not sign the above receipt except when the payment is made in cash.)

(Certification and account to be completely filled in by Judge-Advocate, or before signature by Judge-Advocate, without alteration or erasure thereafter.)

I certify that —— ——, a civilian in Government employ, has been in attendance as a material witness from ——, 190 –, to ——, 190—, inclusive, before a —— court-martial, duly convened at this place, and that he was duly summoned thereto from ——.

(NOT TO BE SIGNED IN DUPLICATE.)

—— ——,

—— ——,

Judge-Advocate.[1]

Place ——.

Date ——, 190—.

NOTES ON FORM 13B.

The Paymaster is, under paragraphs 999 to 1003, Army Regulations, 1908, governed by the following rules in the treatment of voucher for travel expenses of civilian witnesses before military courts:

1. The voucher must be accompanied by authenticated copy of the order convening the court or appointing summary court.

2. The affidavit of witness and judge-advocate's or summary court officer's certificate are required in all cases.

3. A retired army officer is a civilian not in Government employ in contemplation of Army Regulation 1000. (10 Comp., 51.)

In case a witness duly subpœnaed before a general court-martial refuses to appear or qualify as a witness or to testify or produce documentary evidence as required by law, he will at once be tendered or paid by the nearest paymaster these fees and mileage and will thereupon be again called upon to comply with the requirements of law. Civilian witnesses will be paid by the Pay Department. (A. R., 1001.)

4. The items of expenditure authorized in paragraphs 999 to 1003, Army Regulations, will be set forth in detail in a memorandum which will be attached to each

[1] See note 1, page 176, *ante*.

voucher. The correctness of the items will be attested by the affidavit of the witness, to be made, when practicable, before the judge-advocate.

5. The certificate of the judge-advocate will be evidence of the fact and period of attendance and show place from which summoned, and will be made on the voucher.

6. Upon execution of the affidavit and certificate the witness will be paid upon his discharge from attendance, without awaiting performance of return travel. The charges for return journeys will be made upon the basis of the actual charges allowed for travel to the court.

No other items will be allowed.

7. Civilian witnesses *in* Government employ will receive as follows:

(*a*) Amount actually paid for cost of transportation or travel fare.

(*b*) Amount actually paid for cost of transfers to and from railway stations, not exceeding 50 cents for each transfer.

(*c*) Amount actually paid for cost of one double berth in sleeping car or on steamers where an extra charge is made therefor.

(*d*) The *actual cost* of meals and rooms at a rate *not exceeding* $3 per day for each day unavoidably consumed in travel or in attendance on the court.

8. Travel must be estimated by the shortest available usually traveled route; the charge for cost of travel—items (*a*), (*b*), (*c*)—by established lines of railroad, stage, or steamer should not exceed the usual rates in like cases; the time occupied to be determined by the official schedules, reasonable allowance being made for unavoidable detention.

9. The voucher, or the order for attendance, will be presumed to show in all cases, by indorsement or otherwise, *if transportation* in kind or commutation of rations *has been furnished*.

Transportation in kind will, for any distance covered thereby, be a bar to payment of item (*a*).

Indorsements of transportation furnished are scrutinized to ascertain if any part of item (*c*) has been included.

Commutation of rations will be a bar to payment of item (*d*).

Transportation and commutation of rations will be a bar to any payment.

10. No per diem allowance can be made where the attendance upon court does not require the witness to leave his station. (This applies only to civilians in Government employ.)

11. Compensation to civilians in or out of Government employ, for attendance upon *civil courts*, is payable by the civil authorities. (A. R., 1004.)

12. If the witness is in Government employ the judge-advocate will state the fact. If it does not appear in the certificate or elsewhere in the papers, and is not known to the paymaster, it will be assumed that the witness is *not* in Government employ.

13. Whenever needed, judge-advocate can procure blank accounts for civilian witnesses from any army paymaster or the Paymaster-General's office. The accounts may then be made out upon the witness's discharge from attendance. If no paymaster be present at the place where the court sits, the accounts, authenticated as above directed, may be transmitted to any paymaster, with confidence that the witness will receive his pay without unnecessary delay.

14. Accounts of citizen witnesses are not transferable. (See Circular 13, A. G. O., 1895.)

15. Signature of witnesses when signed by mark must be witnessed.

ACCOUNT OF REPORTER.

Form 27—Pay Department.

Voucher No. —. Pay, 19—.

The United States, to —— ——, Reporter, Dr.

Date. 190—.		Dollars.	Cents.
	To services as a reporter before a —— —— convened at ——, pursuant to Special Orders, No. ——, Department ——, ——, 190—:		
-------	To —— hours before the ——, at (Court, board, or commission.) $1 per hour		
-------	To —— words, at 15 cents per 100 words		
-------	To —— words, at 10 cents per 100 words		
-------	To —— words, carbon copies, at 2 cents per 100 words		
-------	To —— days in going to, in attendance on, and returning from said ——, at (Court, board, or commission.)		
-------	$3 per day		
-------	To mileage for travel between —— and —— in going to and returning from the court, being —— miles, at — cents a mile		
	Total		

(Certification and account to be completely filled in by Judge-Advocate, before signature by Judge-Advocate, without alteration or erasure thereafter.)

I CERTIFY that —— —— was employed by me as a reporter for a ——, under the annexed authority, and that the account for his services as stated above is correct and just.

(NOT TO BE SIGNED IN DUPLICATE.)

——,

——,

(Judge-Advocate or Recorder.)

Paid by check No. —— on ——, dated ——, 190—, for $——.

Notes on Form 27—Pay Department.

1. The method of employment of stenographic re-reporters for courts-martial, military commissions, or courts of inquiry, and their compensation as provided by paragraph 996, Army Regulations, amended by General Order 132, War Department, 1908, are as follows:

(Here follows paragraph 996, Army Regulations, 1908, as given in paragraph 2, pages 26 and 27, *ante*, except the last paragraph on page 27.)

2. Stenographic reporters for *retiring boards* can only be employed on the authority of the Secretary of War obtained in advance of the employment. The authority must be filed with the voucher on which payment is made. (Decision of the Secretary of War, April 24, 1879.)

3. The authority for the employment of a reporter for court-martial, court of inquiry, military commission, or retiring board, and for carbon copies of proceedings, must be filed with the voucher on which payment is made.

4. The mileage for a reporter is the same as is allowed for civilian witnesses not in Government employ, except that when Government transportation is furnished no mileage is allowed.

5. Copies of the order appointing court-martial, court of inquiry. military commission, or retiring board must be filed with the voucher.

FORM FOR GENERAL ORDERS.

HEADQUARTERS DEPARTMENT OF ——,
——, ——, 19—.

GENERAL ORDERS, }
No. ——. }

I. Before a general court-martial which convened at Fort ——, ——, pursuant to Special Orders, No. ——, Headquarters Department of ——, ——, 19—, were arraigned and tried —.

1. Private A—— B——, Troop ——, —— U. S. Cavalry, *alias* Private C—— D——, Company ——, —— U. S. Infantry.

CHARGES.

Charge I: Desertion, in violation of the 47th Article of War.

Specification 1: In that Private A—— B——, Troop ——, —— U. S. Cavalry, *alias* Private C—— D——, Company ——, —— U. S. Infantry, a soldier in the service of the United States, did desert the same at —— on or about the —— of ——, 19—, and did remain absent in desertion until he was apprehended at ——, on or about the —— of ——, 19—.

Specification 2: In that Private A—— B——, Troop ——, —— U. S. Cavalry, *alias* Private C—— D——, Company ——, —— U. S. Infantry, a soldier in the service of the United States, did desert the same at —— on or about the —— of ——, 19—, by enlisting under the name of C—— D——, in Company ——, —— U. S. Infantry, without a regular discharge from said Troop ——, —— U. S. Cavalry.

Charge II: Fraudulent enlistment, in violation of the 62d Article of War.

Specification: In that Private A—— B——, Troop ——, —— U. S. Cavalry, *alias* Private C—— D——, Company ——, —— U. S. Infantry, a soldier in the service of the United States, did, without a discharge from *said regiment* of cavalry, fraudulently enlist in Company ——, —— U. S. Infantry, at ——, on the —— of ——, *19—*, under the name of C—— D——.

PLEAS.

To the 1st Specification, Charge I: "Not Guilty."
To the 2d Specification, Charge I: "Not Guilty."
To Charge I: "Not Guilty."
To the Specification, Charge II: "Not Guilty."
To Charge II: "Not Guilty."

FINDINGS.

Of the 1st Specification, Charge I: "Guilty."
Of the 2d Specification, Charge I: "Guilty."
Of Charge I: "Guilty."
Of the Specification, Charge II: "Guilty."
Of Charge II: "Guilty."

SENTENCE.

To be dishonorably discharged the service of the United States, forfeiting all pay and allowances due him, and to be confined at hard labor in the United States Military Prison, Fort Leavenworth, Kans., for —— (—) years.

ACTION.[1]

The sentence in the foregoing case of Private A—— B——, Troop ——, —— U. S. Cavalry, *alias* Private C—— D——, Company ——, —— U. S. Infantry, is approved and will be duly executed.

* * * * * * *

By command of Brigadier General —— ——:

—— ——,
Adjutant General.

---

[1] Where the sentence requires the confirmation of the President, the action of the convening authority and the confirmation of the sentence may be stated briefly, varying with the facts, substantially as follows:

"The finding of guilty of the —— specification, —— charge, was disapproved by the convening authority. The sentence having been approved by him and the record of trial forwarded for the action of the President, under the 106th Article of War, the following are his orders thereon * * *"

or (*if there be no disapproval of any finding*):

"The sentence having been approved by the convening authority and *the record of trial* forwarded for the action of the President, under the 106th *Article of War*, the following are his orders thereon * * *."

Form A.

HABEAS CORPUS BY UNITED STATES COURT.

RETURN TO WRIT.

In re —— ——. (*Name of party held.*)

(*Writ of habeas corpus—Return of respondent.*)

To the —— ——. (*Court or judge.*)

The respondent, Major —— ——, U. S. Infantry, upon whom has been served a writ of *habeas corpus* for the production of —— ——, respectfully makes return and states that he holds the said —— —— by authority of the United States as a soldier in the United States Army (*or* "as a military convict under sentence of general court-martial") under the following circumstances:

That the said —— —— was duly enlisted as a soldier in the service of the United States at ——, ——, on —— ——, 19—, for a term of —— years. (*If the offense is fraudulent enlistment this recital should be omitted.*)

(*Here state the offense. If it is fraudulent enlistment by representing himself to be of age, it may be stated as follows:*)

That on the —— day of ——, 19—, at ——, ——, the said —— ——, being then a minor, did fraudulently enlist in the military service of the United States for the term of —— years, by falsely representing himself to be over twenty-one years of age, to wit, —— years and —— months; and has, since said enlistment, received pay and allowances (*or either*) thereunder.

(*If the offense is desertion, it may be stated substantially as follows:*)

That the said —— —— deserted said service at ——, ——, on —— ——, 19—, and remained absent in desertion until he was apprehended at ——, ——, on —— ——, 19—, by —— ——, and was thereupon committed to the custody of the respondent as commanding officer of the post of ——.

That said —— —— has been placed in confinement (*or* "arrest," *as the case may be*), charged with said offense, and formal charges against him therefor have

been preferred, a copy of which is hereto annexed (*or* "are being prepared"), and that he will be brought to trial thereon as soon as practicable before a court-martial to be convened by the commanding general of the Department of —— (*or* "convened by Special Orders, No. ——, dated Headquarters Department of ——, 19—, a copy of which is hereto annexed").

(*If the party held is a military convict, the following paragraph should be substituted for the preceding paragraph:*)

That the said —— —— was duly arraigned for said offense before a general court-martial, convened by Special Orders, No. ——, dated Headquarters Department of ——, —— ——, 19—, was convicted thereof by said court, and was sentenced to be ——, which sentence was duly approved on the —— day of ——, 19—, by the officer ordering the court (*or* "by the officer commanding said Department of —— for the time being") as required by the 104th Article of War. A copy of the order promulgating said sentence is hereto attached.

In obedience, however, to the said writ of *habeas corpus* the respondent herewith produces before the court the body of the said —— ——, respectfully refers to the decisions cited in the annexed brief, and for the reasons set forth in this return prays this honorable court to dismiss the said writ.

—— ——,
Major, —— U. S. Infantry.

Dated ——, ——,
—— ——, 19—.

Form B.

HABEAS CORPUS BY STATE COURT.

RETURN TO WRIT.

(*Make return as in case of writ by a United States court, except as to last paragraph, for which substitute as follows:*)

And said respondent further makes return that he has *not* produced the body of the said —— ——, because he

holds him by authority of the United States as above set forth, and that this court (*or* "your honor," *as the case may be*) is without jurisdiction in the premises, and he respectfully refers to the decisions of the Supreme Court of the United States in Ableman *v.* Booth, 21 Howard, 506, and Tarble's case, 13 Wallace, 397, as authority for his action, and prays this court (*or* "your honor") to dismiss the writ.

——— ———,
Major, —— *U. S. Infantry.*

Dated ——, ——,
——— ———, 19—.

INSTRUCTIONS AS TO RETURNS TO WRITS OF HABEAS CORPUS.

The following instructions in regard to returns under paragraphs 1008 and 1009, Army Regulations, in the cases of soldiers who have committed military offenses and are held for trial or punishment therefor, and of military convicts, are for the information and guidance of all concerned:

1. The return under paragraph 1009, Army Regulations, will be made in accordance with Form A (see page 188, *ante*), and will refer, as in last paragraph of that form, to the brief of authorities which follows these instructions, and a copy of that brief will be annexed to the return. Should the court order the discharge of the party, the officer making the return, or counsel, should note an appeal pending instructions from the War Department, and he will report to The Adjutant-General of the Army the action taken by the court and forward a copy of the opinion of the court as soon as it can be obtained.

2. The return under paragraph 1008, Army Regulations, will be made in accordance with Form B (see page 189, *ante*), but a copy of the brief of authorities is *not intended to* be attached to the returns to writ of *habeas corpus* issuing from a State court.

BRIEF TO BE FILED WITH RETURN TO A WRIT OF HABEAS CORPUS ISSUED BY UNITED STATES COURT IN CASE OF A SOLDIER WHOSE DISCHARGE IS SOUGHT UNDER SECTION 1117, REVISED STATUTES.

If a minor sixteen years old or over claims to be twenty-one years of age or over and enlists without the consent required by section 1117, Revised Statutes, the contract of enlistment is not voidable by the minor, nor by his parents or guardian, if at the time of the filing of the petition the soldier is held in pursuance of a sentence of a court-martial, or any step has been taken with a view to bringing him before such court.

1. CONTRACT NOT VOIDABLE BY MINOR.

(*a*) *When soldier is not in confinement.*—United States *ex rel.* Wagner *v.* Gibbon, 24 Federal Reporter, 135. In this case Wagner, becoming "tired of the service," sought his discharge from the Army "solely on the ground of minority at the time of enlistment." This the court refused to grant, holding that section 1117, Revised Statutes, "was made for the exclusive benefit of parents and guardians," and that, quoting from the syllabus—

> A minor over sixteen years of age, who at the time of his enlistment makes affidavit that he is twenty-one years of age, will not, on his own application, be releasad on *habeas corpus* on the ground that he was a minor at the time of his enlistment, and that the written consent of his guardian was not obtained.

(*b*) *When soldier is in confinement.*—*In re* Morrissey, 137 United States, 157; *In re* Grimley, 137 United States, 147; *In re* Wall, 8 Federal Reporter, 85; *In re* Davison, 21 Federal Reporter, 618; *In re* Zimmerman, 30 Federal Reporter, 176; *In re* Hearn, 32 Federal Reporter, 141; *In re* Spencer, 40 Federal Reporter, 149; *In re* Lawler, 40 Federal Reporter, 233; Solomon *v.* Davenport, 87 Federal Reporter, 318.

In the Morrissey case the Supreme Court of the United States settles this beyond question. Morrissey, a minor

of seventeen years of age, enlisted without the consent of his mother, who was living. He deserted, remained in concealment until he reached his majority, and then presented himself before a recruiting officer and demanded his discharge from the Army on the ground that he was a minor when enlisted. The court said that the provision of section 1117, Revised Statutes—

is for the benefit of the parent or guardian, * * * but it gives no privilege to the minor. * * * An enlistment is not a contract only, but effects a change of status. It is not, therefore, like an ordinary contract, voidable by the infant. * * * The contract of enlistment was good so far as the petitioner is concerned. He was not only *de facto*, but *de jure*, a soldier—amenable to military jurisdiction.

All the cases cited are instructive as illustrative of the different circumstances under which this principle has been declared.

In the Lawler case the deserter was arrested and "held as such awaiting trial, which will be as soon as a court-martial can be convened and organized for that purpose."

In the case of Solomon *v.* Davenport, the deserter was held by a sheriff under a warrant of a United States commissioner.

In the Spencer case the court said:

The authorities which have been read to me seem to establish very conclusively this rule—that the enlistment of a minor is voidable, not necessarily void; and that he does really become by such enlistment, although under age, engaged in the service of the United States, and subject to the power and jurisdiction of the military authorities; and, such being the case, the court-martial had jurisdiction to arrest and try him for the charge of desertion.

2. CONTRACT NOT VOIDABLE BY PARENTS OR GUARDIANS IF THE SOLDIER IS HELD PURSUANT TO A SENTENCE OF A COURT-MARTIAL OR ANY STEP HAS BEEN TAKEN WITH A VIEW TO BRINGING HIM BEFORE SUCH COURT.

In re Kaufman, 41 Federal Reporter, 876; *In re* Dohrendorf, *et al.*, 40 Federal Reporter, 148; *In re* Cosenow, 37 Federal Reporter, 668; *In re* Dowd, 90 Federal Reporter, 718; *In re Miller*, 114 Federal Reporter, 838; U. S. *vs. Reaves, 126 Federal* Reporter, 127; In re Lessard, 134

Federal Reporter, 305; *Ex parte* Anderson, 16 Iowa, 595; McConologue's case, 107 Massachusetts, 170.

In the Kaufman case, the father sought the discharge of his son, who was held by the military authorities and had been ordered before a military court for trial as a deserter. Quoting from the syllabus:

A minor who enlists in the United States Army upon his representation that he is of age, and receives pay and clothing and afterwards deserts and is arrested as a deserter, and at the time of his petition is held by the United States awaiting trial by a court-martial for the crime of desertion, will not be released under a writ of *habeas corpus* upon the ground that being a minor his enlistment was unlawful and contrary to the Revised Statutes of the United States.

In the Cosenow case the minor swore that he was twenty-one years and seven months old at the time of enlistment. He deserted, and at the time of the filing of the petition was held in custody awaiting the action of the reviewing authority on the proceedings of the court-martial. His father sought the discharge of his son on the ground of infancy at the time of enlistment. The court refused to discharge him, holding that "an enlistment contrary to law is not void, but voidable;" that the court-martial had jurisdiction of the offense, and the soldier "must be remanded to await the result of his trial."

The Dowd case arose on the application of the mother for the release of her son, who was held under sentence of a summary court. The court held, quoting from the syllabus:

The enlistment of a minor in the Army without the consent of his parents or guardian, required by Revised Statutes, section 1117, is not void, but voidable only, and while he remains in the service under such enlistment the minor is amenable to the Articles of War, and can not be remanded to the custody of his parents by a civil court on a writ of *habeas corpus* while undergoing a sentence imposed on him by a court-martial for a violation of such articles.

In the Anderson case it appears that a minor enlisted without his father's consent, and being held for trial before a court-martial for desertion, his father sought his discharge on *habeas corpus*. The court refused to

discharge the soldier, saying "he must abide by the decision of the latter court (court-martial) before the question of the validity of his enlistment can be determined in the civil courts on *habeas corpus.*"

In McConologue's case the court said:

A minor's contract of enlistment is indeed voidable only and not void, and if, before a writ of *habeas corpus* is sued out to avoid it, he is arrested on charges of desertion, he should not be released by the court while proceedings for his trial by the military authorities are pending.

By act of July 27, 1892, "fraudulent enlistment, and the receipt of any pay or allowance thereunder, is . . . declared a military offense and made punishable by court-martial under the 62d Article of War." A minor who procures his enlistment by representing himself to be over age commits this offense, and the statute authorizes his punishment therefor. In general it may be stated that where a minor has committed a military offense the interests of the public in the administration of justice are paramount to the right of the parent and require that the soldier shall abide the consequences of his offense before the right to his discharge be passed upon. (Digest Opin. J. A. G., secs. 1258 and 1264, and notes.)

The soldier should not be allowed to escape punishment for his offense, even though his parents assert their right to his services. A minor in civil life is liable to punishment for a crime or misdemeanor, even though his confinement may interfere with the rights of his parents. *In re* Miller (114 Fed. Rep., 838), it was held that a minor 16 years old or over "enlisting without the consent of his parents, on representation that he is of age, *becomes a soldier* amenable to military jurisdiction for military offenses, and subject to release from service only on application from his parents, *who can not prevent his court-martial for past military offenses.*" In the opinion of the court (page 842) it is said:

The common law unaided by statute, fully recognized the parents' rights *to the custody and services* of their minor child; but it has never been held *that they could, by the* writ of habeas corpus or otherwise, obtain his

custody and his immunity when he was held by an officer of a civil court of competent jurisdiction to answer a charge of crime. His enlistment having made the prisoner a soldier notwithstanding his minority, he is answerable to the military law *just as the citizen who is a minor is answerable to the civil law. The parents can not prevent the law's enforcement in either case.* * * *

These views were cited with approval in U. S. *vs.* Reaves (126 Fed. Rep., 127), where, upon full consideration of the authorities, the circuit court of appeals remanded Reaves, a minor who had deserted from the Navy, to the custody of the naval authorities as represented by the chief of police who had apprehended him.

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